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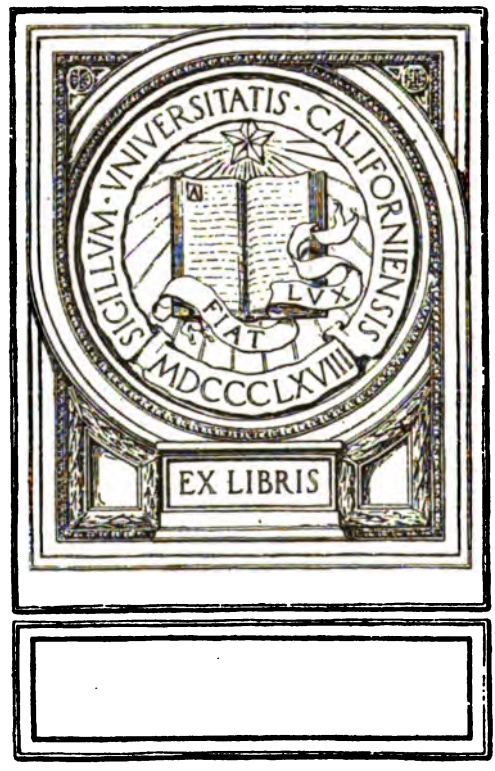
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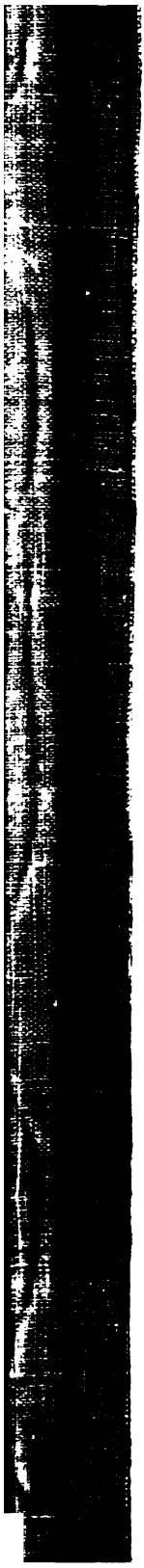

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DAVID BARTON

Speaker of the Missouri Territorial House of Representatives 1818, President of the Missouri Constitutional Convention 1820, United States Senator from Missouri 1820-1830

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MISSOURI'S STRUGGLE FOR STATEHOOD

1804-1821

BY

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The State Historical Society of Missouri

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TO ISIDOR LOEB

Native Missourian, Citizen of Public Spirit, Distinguished Scholar and Educator, Guide and Teacher in my Early Study of Government and Politics, This Book, in Token of Friendship and Gratitude Sincere, is Dedicated.

333935

PREFACE.

To relate in an accurate manner the story of Missouri's struggle for statehood, of her first constitutional convention and constitution, and of her first state election and legislature, has been my purpose. The birth of a state is an important event. The travail of the State of Missouri was especially significant even in the history of the Nation. Congress alone was forced to adopt two compromises after four sessions of debate before the "Missouri Question" was settled. The existence of slavery in new states and territories was for the first time the great problem in public discussion and Congressional debate. The national side of Missouri's struggle for statehood has received more or less attention from writers: the local side has been passed over with little comment. The latter made its appeal to me over six years ago. Beginning in 1909 and continuing to 1911, I made a study of the history and origin of the Missouri constitution of 1820. During the years following I enlarged this study to its present scope.

Few secondary works were used in this volume. Private and public manuscripts, laws, constitutions, journals of legislative bodies and constitutional conventions, memoirs and newspapers, have been the bases of most statements. The chief defect of the work lies in its lack of a *Bibliography*. This has been largely remedied, however, by the foot-notes which explain where the material consulted may be found.

To a number of persons I am indebted for aid. For suggestions and criticisms of a literary character, I beg to acknowledge the kind services of Profs. H. M. Belden, A. H. R. Fairchild and H. McC. Burrowes, of the English Department of the University of Missouri. For assistance of a historical nature, I am under obligations to Prof. F. F. Stephens, of the History Department of the University of Missouri, and to the Hon. Louis Houck, of Cape Girardeau, Missouri. To Mr. Houck I am specially indebted for his mature advice and sug-

gestions on several of the early chapters, for the information obtained from his *History of Missouri*, and for the use of most of the cuts in this book. No general work on Missouri history down to 1820 bears comparison with Houck's *History of Missouri.* This work should be in the hands of every student of western and Missouri history. It and Prof. H. A. Trexler's *Slavery in Missouri* were, in fact, practically the only secondary works that helped me.

To the hundreds of Missourians who furnished me with information relating to the delegates who framed Missouri's first constitution, I especially wish to acknowledge thanks of appreciation. Without their help and the kind services of the editors of the State in forwarding my quest for information, I could never have written the chapter on *The Fathers of the State.* Without the aid of Dr. Mereness, of Washington, D. C., I could not have obtained copies of the early Missouri petitions in the National archives. To Mr. Putnam, librarian of the Library of Congress, and to his courteous assistants, I am under obligations for help of the greatest value. Modesty should not, I think, estop me from also acknowledging the extent and character of the information obtained from the invaluable collections of The State Historical Society of Missouri. Most of my work was done in the library of this institution and to it I feel under special obligations.

The delay in publishing this work has been a source of deep regret to me. The Hugh Stephens Printing Company did well its part, my duties in The State Historical Society prevented me, however, from handling proof as fast as I had expected.

The approaching centennial of Missouri's statehood makes opportune this volume. From it facts may be obtained that will give a more secure foundation to the mass of popular literature that will be published on Missouri history during the next half decade. To have accurate information on Missouri's struggle for statehood, on her first constitutional convention and constitution, on her first state election and on the inner workings of her first general assembly, is not only desirable but important to Missouri and Missourians. To place this information in the hands of all seeking it, is my excuse for writing this book.

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CHAPTER I.

MISSOURI CONSTITUTIONAL HISTORY DURING THE TERRITORIAL PERIOD.

In the history of an American commonwealth there appear relatively few dates that chronicle events of commanding importance. Ranking first in the history of Missouri and one of the foremost in that of the United States, is April 30, 1803. On that date was concluded the treaty between this Nation and France for the cession of Louisiana. The ratification of this treaty was advised by the United States Senate and was made by President Jefferson on October 21, 1803; and on the same day ratifications were exchanged and a proclamation was issued to that effect.[1] By this treaty the United States came into the absolute possession of the largest and most valuable extent of territory that was ever obtained purely through purchase by any nation since the dawn of history. Prior to 1762 France had held legal title to Louisiana, but since the settlements made in that part now included in the State of Missouri had been few, the French law need not receive consideration here. From 1762 to 1800 Spain held legal title to Louisiana. By the Treaty of San Ildefonso, October 1, 1800, Louisiana was retroceded by Spain to France, but Spain remained in actual possession almost up to the time of transfer to the United States in 1803. During a period of thirty-four years the Spanish law of Upper Louisiana governed the people within the present limits of Missouri.[2] Nor were these laws less binding after the cession of 1803, except as they were expressly annulled, superseded, or amended.[3] However, for our purposes, the provisions of the Spanish laws

[1] *Treaties & Conventions*, I. 508-11; *Mo. Ter. Laws*, I. 1-4.

[2] Houck, *Hist. Mo.*, I. 287, 298. The secret treaty of Fontainebleau, December 3, 1762, ceded the territory west of the Mississippi to Spain. France officially advised the director-general of Louisiana of this fact in a letter dated April 21, 1764. On the 18th of August, 1769, Spain took possession of Louisiana, and on May 20, 1770, Upper Louisiana was formally surrendered to Spain.

[3] Casselberry, *First Laws of the Miss. Valley*, *Western Journal*, I. 191f; 4 *Mo. Reports*, p. 380; 10 *Mo. Reports*, p. 199; Mo. Ter. Laws, 1816, p. 436.

of Upper Louisiana may be disregarded. The English system of jurisprudence gradually superseded that of the Continent in Upper Louisiana, and today the organic law of Missouri rests on an Anglo-American basis beginning with the act of Congress of October 31, 1803.

It is important to notice in this connection one of the articles of the treaty of cession of 1803. Article III stated: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess." At the time of Missouri's struggle for admission in 1819 and 1820, it appears from the articles in the territorial newspapers that practically every well informed Missourian was familiar with this article and especially with that part which guaranteed the inhabitants protection "in the free enjoyment of their liberty, property, and the religion," etc. Slaves formed part of the "property" of the people of Upper Louisiana prior to 1803, and also after that time, and Congressional dictation on this subject only served to recall the third article of the treaty of 1803.

Under Spanish rule, the Province of Louisiana was divided into a lower and an upper district for the purpose of facilitating governmental administration. There were several reasons for this division, the more important being the great distance separating the two centers of settlement near the mouth of the Mississippi and that of the Missouri.[4] Also, the population around New Orleans, which was the seat of government of Lower Louisiana, was greater and represented a higher stage of development than we find in Upper Louisiana. The Governor-

[4] Nicollet in his history of St. Louis, page 92, states that in 1763, Laclede, the founder of St. Louis, took three months to come from New Orleans to Ste. Genevieve with his flotilla, a distance of 1,286 miles.

Cf. also Houck, *Hist. Mo.*, II. 4.

It took about three months to ascend the Mississippi at that time as is also evidenced in the Report of Don Pedro Piernas to Gov. O'Reilly dated Oct. 31, 1769, (Houck, *Spanish Regime in Mo.*, I. 66-75.) and in a letter of Fernando De Leyba dated July 11, 1778. (*Ibid.*, pp. 163f.)

General at New Orleans exercised direct jurisdiction over Lower Louisiana and appellate jurisdiction over the upper district; and a Lieutenant-Governor at St. Louis exercised direct jurisdiction over Upper Louisiana.[5]

At the time of the cession the population of Upper Louisiana was over ten thousand,[6] of which over one-half were Americans.[7] Not only did Spanish law give place to English law, but even Spanish and French influence as represented by the population had already greatly diminished and was soon to become a negligible quantity as far as legislation was concerned. Excepting some of the large Spanish land grantees and a part of the American settlers, especially those around Cape Girardeau and Mine a Breton, the inhabitants of Upper Louisiana neither rejoiced nor were they even reconciled either at the time when the treaty of cession became known or later when the actual transfer was made.[8] As an historical illustration of

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[5] Stoddard, *Sketches of Louisiana*, chap. VIII. Loeb, *Beginning of Mo. Leg.* in *Mo. Hist. R.*, I. 53f.

[6] Stoddard, *op. cit.*, p. 226, gives the population in 1804 as 10,340—9,020 whites and 1,320 slaves.

[7] *Ibid.*, p. 225, states that three-fifths of the population were "English Americans."

Perkins and Peck, *Annals of the West*, pp. 543f., gives the total population of Upper Louisiana in 1804 as 10,120 and divides it as follows: French and Spanish, 3,760; Anglo-Americans, 5,090; Blacks, 1,270.

Rufus Easton, later Territorial Delegate to Congress from Missouri, in a letter dated at St. Louis, January 17, 1805, to President Jefferson, states that in 1801 the census taken of the inhabitants of Upper Louisiana showed a population of 10,301; and that according to the best informed persons in the district the population at the close of 1804 had risen to over 12,000. Of this latter number he thought that two-fifths were French and the others mostly immigrants from the United States. (Copy of this letter in *State Hist. Soc. of Missouri:* original in *Mss. Div., Library of Cong., Jefferson Papers*, 2d Series, vol. 32.)

[8] "On the 9th day of July, 1803, at seven o'clock p. m.—and the precision with which this date is registered indicates the profound sensation with which the news was received—the inhabitants of St. Louis learned, indirectly at first, that Spain had retroceded Louisiana to Napoleon, and that the latter had *sold* it to the United States." Nicollet, p. 89.

"It is easier to imagine than to describe the astonishment and wonder of the good colonists, when, as a sequel of the sundry official acts by which they were declared *republicans*, and their country a member of the great American confederation *founded by Washington*, they witnessed the arrival of a legion of judges, lawyers, notaries, collectors of taxes, etc., etc., and, above all, a flock of vampires in the shape of land speculators. Liberty, with the popular institutions that accompany her, was welcomed; their advantages were soon understood; etc." *Ibid.*, pp. 90f. This last statement by Nicollet is not entirely true. American institutions were not welcomed, especially by the better class of Frenchmen, and

however quickly they were understood, their advantages were late in being appreciated. See below the account of the French convention of delegates in September, 1804.

Mr. Primm says:—

"When the transfer was completely effected—when in the presence of the assembled population, the flag of the United States had replaced that of Spain—the tears and lamentations of the ancient inhabitants, proved how much they dreaded the change which the treaty of cession had brought about." Perkins and Peck, *op. cit.*, p. 537.

Mr. Houck does not take the same position on this point. He says: "Without the least objection on the part of the French population of Upper Louisiana, and to the great satisfaction of the American settlers, the jurisdiction of the United States was thus extended over the new territory." (Houck, *Hist. Mo.*, II. 373). Speaking of the sentiment in Cape Girardeau, he adds: "At Cape Girardeau the people, who were all Americans, with the exception of Lorimier and Cousin, were pleased greatly with the transfer of the country and seem to have been decidedly hostile, if not to the Spanish Government, to the Spanish officers." (*Ibid.*, p. 364.) However, regarding New Madrid he makes the following statement: "But the people of New Madrid were not pleased with the change of government and he [i. e. Don Juan La Vallee, who surrendered the New Madrid fort to Captain Bissell] writes that 'this change has caused the greatest anger among these habitans, who live here, and especially on the day of surrender, during the ceremonies of which they have expressed the greatest grief.' 4" (*Ibid.*, p. 363. The footnote No. 4 gives the authority for the foregoing as follows: "General Archives of the Indies, Seville—Report of La Vallee to the Marquis de Casa Calvo and Don Manuel de Salcedo—dated March 29, 1804.")

Even as regards the inhabitants of Cape Girardeau, Major T. W. Waters, a resident of that town, wrote in a letter dated August 23, 1804, to President Jefferson as follows: "I will observe one thing to you, Sir, that many here do not like the change and every law that is passed that puts them in a worse situation than they would have been under the Spaniards is criticised and the worst construction put on, and those that are fond of the change feel disappointed at the law that Congress has passed for the government of this country." (*Ibid.*, pp. 385f.) It is however, quite probable that Major Waters referred *purely* to the change in sentiment after the cession was made and after the law of Congress of March 26, 1804, became known.

Regarding the holders of large Spanish land grants and incidentally of the sentiment in St. Louis at the time of the cession, Mr. Houck says: "A few French land speculators, who, ... , had secured large and important concessions of land, no doubt anticipated to reap great benefits. They well understood that land values would greatly increase, because free donations of land to actual settlers would no longer be made. Under the new government these holders of concessions and their assignees at once became and were regarded as the landed capitalists of the new territory. Such being the case, it is very probable that one of the chief beneficiaries of the favors of the late Spanish authorities became very enthusiastic and called for 'three cheers in honor of his adopted country', as has been stated. Nevertheless, it is said that Charles Gratiot was about the only man in St. Louis who took a personal interest in the transfer of the country to the United States; that the people as a whole were indifferent. But Gratiot had received large land grants and perhaps understood better than anyone in St. Louis at that time the immense benefit a change of government implied." (*Ibid.*, pp. 373f.) Mr. Houck further says: "The general apathy of the French inhabitants at the time lead [led] many to think that the inhabitants were not fit for self-government." (*Ibid.*, p. 375.)

Major Amos Stoddard, who certainly was most competent to judge of the sentiment in Upper Louisiana at the time of the cession, wrote as follows: "Indeed, *few of the French, and part of the English Americans only*, were at first recon-

cled to the change, though they never manifested any discontent. The former did not doubt the justice of the United States; but they seemed to feel as if they had been sold in open market, and by this means degraded; the treaty of 1762, and the change under it in 1769, rushed on their minds, and awakened all their apprehensions. The latter anticipated taxation, many of whom had abandoned their native country to avoid it, and voluntarily became the subjects of a government, careful not to impose any burdens on the agricultural part of the community." (Stoddard, *op. cit.*, p. 311. For an account of some of the actual benefits that did accrue then and later to Upper Louisiana under American rule, *cf. ibid.*, pp. 253f., 266: and Brackenridge, *Views of Louisiana*, pp. 140, 143-145.) (Italics mine.)

An equally reliable authority on this point is Rufus Easton, who on January 17, 1805, wrote the following from St. Louis: "That they the French inhabitants are in general enemies to the change of Government requires no argument to demonstrate—it depends on fact. When it was rumoured thro' [*sic*] this Country last summer that a recession to Spain would take place, joy gladden in their hearts—This however must not be taken for a universal sentiment—It is only that of the few who have feasted upon the labors of the more ignorant and industrious and whom they prejudice and influence as they please. Many have sufficient discernment to perceive that the cession to the United States advanced their landed property at least two hundred per centum they thank the stars and are willing to give the praise to whom it is due." (Letter to Pres. Jefferson. Copy in *State Hist. Soc. of Mo.* Original in *Mss. Div., Library of Congress. Jefferson Papers, 2d Series, vol.* 32.)

Darby, although not a contemporary authority, was well acquainted with many who witnessed the transfer of Upper Louisiana in 1804. The following quotation is from his work: "It was Charles Gratiot who requested the inhabitants, in their native tongue, when the ceremony took place, to cheer the American flag, when it was for the first time run up and floated to the breeze on the western bank of the Mississippi. The cheers of the crowd were faint and few, as many, very many of the people shed bitter tears of regret at being transferred, without previous knowledge, from the sovereignty of a government and language to which they had been accustomed and fondly attached, and under which they had been bred, to that of a strange government, with whose manners, habits, language, and laws they were not familiar. There existed, moreover, in the minds of many of the French inhabitants a deep-rooted prejudice against the Americans, notwithstanding the encouraging and conciliating speech made by their countryman and friend, Charles Gratiot, who was favorable to, and sustained and approved the transfer of the country." . . . "Mr. Jefferson, from his long residence in Paris, understood the French character well, was much attached to the French people, and was aware that the inhabitants of Louisiana disliked and were greatly opposed to the American government." (*Recollections*, pp. 223f.)

Scharff quotes Billon as follows regarding the sentiment in St. Louis in 1804: "On that day (March 9, 1804) the inhabitants witnessed a scene which, to much the largest portion of them, was fraught with sadness and apprehension. These people had been so long contented and happy under the mild sway of all their Spanish commandants, with one exception alone (De Leyba), that it was not surprising they should have entertained those feelings at being transferred, themselves and homes, to a nation whose people were mainly descended from the English, a nation that for generations back they had looked upon as the natural and hereditary enemy of the land from whence they sprung. For it must be borne in mind that they were nearly all of French origin, and although under Spanish dominion, there were but few Spaniards in the country, outside of the officials and soldiery." (*Hist. St. Louis*, I. 259.)

how circumstances may alter cases might be noted here the cold reception extended to the United States by these early Missourians of 1804 when they first learned of their newly made connection with the Federal Union of States, and on the other hand, how impassioned they were fifteen years later in their arguments for admission into that very Union. We believe that the reasons for their first attitude were: their attachment to the Spanish regime with its practical freedom from taxes and military services, with its swift and generally true justice, its liberal land policy, and its uniform respect for French institutions, customs and language; and their dislike of American laws and institutions, combined with the fear of some attack on slavery, such as the Northwest Ordinance of 1787[9]. Moreover, the French inhabitants felt insecure of their religion under the new Republic.[10] Years later when they perceived the benefits that would flow from statehood and when the flood of American immigration poured in, they naturally desired admission into the Union.

The first organic law of American origin that applied to Louisiana was passed at the first session of the Eighth Congress of the United States on October 31, 1803, and provided a temporary government for the new district. This act empowered the President of the United States to take possession of Louisiana, and placed under his direction all military, civil and judicial powers that had been exercised by the officials of the existing government. This great power was lodged in his hands until

[9] It is here worthy of notice that on January 23, 1804, there was communicated to the United States Senate a "Memorial of the American Convention for Promoting the Abolition of Slavery" praying Congress to prohibit by law the importation of slaves into the "Territory of Louisiana, lately ceded to the United States." This memorial actually suggested an enactment on this subject similar to the one in the Northwest Ordinance. *Am. State Papers, Misc.*, I. 386. The chaotic condition of society which had prevailed in the Illinois country after American occupation would also hardly have served to endear the United States in the minds of many of both the French and American settlers who had immigrated to Upper Louisiana from their former homes on the east bank of the Mississippi during the latter eighties and the nineties of the 18th century. *Cf.* also *Kaskaskia Records* 1778-1790, in *Ill. Hist. Collections*, V; especially letter of John Rice Jones, later Justice of Missouri Supreme Court, dated Oct. 29, 1789, at Kaskaskia to Major Hamtramck. (*Ibid.*, pp. 514-517.) The inhabitants of Upper Louisiana, especially the older ones, also undoubtedly resented the manner of cession which appeared to them like a sale in the open market.

[10] Alback's, *Annals of the West*, p. 777.

Congress made other regulations.[11] Strange though it seems to us now, this law was not unfavorably received by the French inhabitants of Louisiana. And the reason for this attitude was not because they excused and appreciated it as a temporary makeshift government and therefore as a necessary, initiatory step towards later self-government, but rather because of their natural inclination for a military regime, due to years of training under just such a centralized government. The belief that this act was unpopular in Upper Louisiana is unfounded in fact. In the eyes of the French better classes it must have seemed at the time the ideal type of government for this territory. It was in the following year, after Congress had passed an act annexing Upper Louisiana to Indiana Territory, that these well-to-do Frenchmen petitioned Congress and through their representative, Chouteau, pleaded with President Jefferson for just this kind of government.

Under this law Captain Amos Stoddard was appointed the first American civil commandant of Upper Louisiana. The seat of government remained at St. Louis, and little change in governmental administration was introduced. This was in accordance with the policy of the Washington officials, who wisely tried to pacify the fears of the inhabitants.[12] Congress did not wait long, however, in making provision for the government of Louisiana. By an act of March 26, 1804, Louisiana was divided into two districts or territories. All south of the thirty-third degree of north latitude was to be called the "territory of Orleans;" and all north, the "district of Louisiana;" the line of demarcation being the present southern boundary of Arkansas. The District of Louisiana was placed under the government of Indiana Territory, which then consisted of a Governor, Secretary, and three Judges. The Governor and Judges exercised full judicial, legislative and executive power

[11] *Stat. at Large*, II. 245; *Treaties & Conventions*, I. 508ff.

[12] Captain Stoddard had instructions that "inasmuch as the largest portion of the old inhabitants were strenuously opposed to the change of government, it would go far to conciliate them, and they would much sooner become reconciled to the new order of things, by making little, if any change in the *modus operandi* of the government, at least for a time." Billon, *Annals of St. Louis*, 1764-1804, p. 364.

under certain general restrictions. They were specifically given power to establish inferior courts and prescribe their duties; make laws, etc., except those abridging religious freedom or those contrary to the laws of the United States; and it was also set forth that criminal trials were to be by a jury of twelve and civil trials involving amounts over $100 also to be by jury. The judges were to hold two annual courts in the district. It was provided, among other things, that the laws in force in the District of Louisiana which were not inconsistent with this act were to remain in force until altered. This act went into effect October 1, 1804,[13] and excepting the attempted legislation bearing on the "Missouri Question" Congress never passed an act which applied solely to Missouri that was more detested by at least one-half of her population than was this one. It is hardly necessary to enter into a discussion of the laws governing the District of Louisiana passed by the Governors and Judges of Indiana Territory. There were sixteen acts passed in all; however, their bearing on this study is unimportant.[14] It should be stated that these laws were well suited to a pioneer community like Missouri, and no criticism of them is found in any of the literature of that day.

From the very beginning of Missouri's connection with the United States there has never existed the least timidity on the part of the people of this State to make known to the nation

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[13] *Stat. at large*, II. 283-289; *Mo. Ter. Laws*, pp. 5f.

A large part of this act also dealt with the government of the Territory of Orleans. The inhabitants of Lower Louisiana included in the new "Territory of Orleans" were equally incensed by this act. They drafted a memorial protesting against the division of Louisiana into two parts and the lack of self-government. This act gave the "Territory of Orleans" a territorial government of the first or lowest grade. This petition is said to have been signed by over two thousand heads of families of Louisiana. It was entitled a "Remonstrance Of The People Of Louisiana Against The Political System Adopted By Congress For Them," and was communicated to the Senate December 31, 1804. *Am. State Papers, Misc.*, I. 396ff.

This petition was placed in the hands of a committee appointed by the House of Representatives. On January 25, 1805, the committee closed its reports with a resolution "that provision ought to be made by law for extending to the inhabitants of Louisiana the right of self-government." This resolution was passed by the House on January 28, 1805. *Annals of Congress*, pp. 1014-21.

To this same committee was also referred the petition of the inhabitants of the "District of Louisiana," which will next be discussed. *Ibid.*, p. 957.

[14] *Cf.* also Loeb, *op. cit.*, I. 59-71.

in a perfectly constitutional way their wants and grievances. The legislation of Congress in 1804 for the inhabitants of the District of Louisiana was received with the greatest disfavor west of the Mississippi, and occasioned the first of a long series of petitions and remonstrances presented to Congress by the inhabitants of the present State of Missouri. These early petitions are characterized by temperate language and a tone of positiveness based on a just cause. Although at the time of the cession there was no considerable open dissatisfaction or opposition, in less than six months after that the discontent was widespread. The people of Upper Louisiana did not like the American regime with its numerous officials, tax gatherers and jury system. They regarded with equal disfavor the method provided for settling the Spanish land grants;[15] the increased expenses under the American regime, e. g., taxes, road and military service without compensation; the absence of all representative government; and the act of March 26, 1804, in whole. As early as August 23, 1804, Major T. W. Waters of Cape Girardeau, a staunch American and a man of influence, wrote President Jefferson that a petition *had been* "drawn up" protesting against parts of that act of Congress.[16] On September 29, 1804, two days before the act of Congress of March 26, 1804, was to take effect, a "remonstrance and petition of the representatives elected by the freemen of the districts in the District of Louisiana to Congress" was drawn up and signed in St. Louis by sixteen deputies from the five subdivisions now included in the State of Missouri.[17] The sixteen delegates were apportioned as follows: two from each of the districts of New Madrid, Cape Girardeau, and Ste. Genevieve; six from St. Louis and "dependencies;" and four from St. Charles and "dependencies." The dissatisfaction with the law of March 26, 1804, was based on the grievances that it annexed upper Louisiana to Indiana Territory; that it contained no provisions granting self-government; that it did not protect and secure slavery west of the

[15] Stoddard, *op. cit.*, p. 253.

[16] Houck, *Hist. Mo.*, II. 385, 387f.

[17] *Am. State Papers, Misc.*, I. 400ff. This petition was presented to Congress January 4, 1805.

Mississippi River; that it proposed settling the eastern Indians on Louisiana soil; and that section fourteen of that act, the section relating to the Spanish land grants, was unjust and unreasonable. This last grievance was beyond question the most real and deeply seated of all. One prominent contemporary of that day even goes so far as to state that the annexation of upper Louisiana to Indiana Territory was only an ostensible objection to the law of 1804, and that the real ground for dissatisfaction was the land title clause.[18]

This interesting petition remonstrates at some length against the division of the Louisiana Purchase into two parts and states that the ceded territory if left as one whole had sufficient population to be admitted as a state; that the Northwest Ordinance provided for the admission of States in that district which had a population of sixty thousand and that Ohio when admitted did not have more than from thirty-three to forty thousand free inhabitants; that the third article of the treaty of cession provided that the inhabitants of Louisiana were to be incorporated into the United States as soon as possible; that if Congress could divide Louisiana once, she could subdivide indefinitely whenever the population became sufficient to form a state, and thus would Louisiana be always oppressed. This part of the remonstrance against the division of Louisiana was followed by a protest against the form of government provided for the "District of Louisiana." The delegates seriously objected to being under the government of another territory; being under a governor of another territory who did not reside or hold a freehold estate in the District of Louisiana; the seat of government being at Vincennes, which was one hundred and sixty-five miles over impassable roads from them, and the governor sometimes even farther distant; the laws of Indiana Territory not being similar to those of Louisiana, e. g., slavery existed in Louisiana and was prohibited in the Northwest Territory; and to the absence of a Congressional law on slavery, which might make the inhabitants of the District of Louisiana feel that perhaps some day Congress would abolish it, even though by the treaty with France they were protected in their

[18] Letter of Rufus Easton, *op. cit.*

property. In short they objected to the great injustice of being under Indiana Territory; but they also objected, and, we believe, in a more serious way, to the fourteenth section of the act of Congress of March 26, 1804, which declared null and void all Spanish land grants made subsequent to the treaty of San Ildefonso, and to the fifteenth section of this same act which settled Indians from east of the Mississippi on the land in Louisiana District. Further, they objected to the use of the inferior word "District" as applied to Louisiana in contradistinction to "Territory" as applied to Indiana and Orleans.[19] There was really much righteous wrath on the part of the Louisiana inhabitants against that part of the Act of Congress which proposed settling the Indians from the country east of the Mississippi in this district. The necessity of protecting themselves against the Indians already west of the Mississippi imposed labors and hardships on those pioneers. Even President Jefferson, who, we think, lacked here his usual foresight, warmly favored this removal of the savages.[20]

The delegates then asked that the act which divided Louisiana into two territories and which provided a temporary government thereof, be repealed; that there be made a *permanent* division of Louisiana legally; that the Governor, Secretary, and Judges of Louisiana District be appointed by the President and reside and hold property there; that the above officers be appointed from those speaking both French and English; that the records of each county and the proceedings of the courts of Louisiana District be kept in both French and English; that Louisiana District be divided into five counties and that the people of each county elect two members for a term of two years to form with the Governor a Legislative Council; that they be protected in their slaves and be given the right to import slaves. They also asked that Louisiana District be permitted to send a delegate to Congress and that funds be apportioned and lands set

[19] Houck, *Hist. Mo.*, II. 388.

[20] Jefferson's *Writings*, VIII. 249. In a letter to Horatio Gates dated July 11, 1803, speaking of Louisiana Jefferson writes: "If our legislature dispose of it with the wisdom we have a right to expect, they may make it the means of tempting all our Indians on the East side of the Mississippi to remove to the West, and of condensing instead of scattering our population."

apart for French and English schools in each county and also for a "seminary of learning." And, finally, they requested that private engagements which had been entered into during the Spanish rule and which were conformable to the Spanish law, be maintained; that former final judgments rendered according to the Spanish law, should not be reversed; and that former judgments which had been rendered under the Spanish law and which according to it were appealable, should still be appealable to the proper United States courts.

This petition was accompanied by a declaration of "the Representatives of the District of Louisiana, in General Assembly met," signed in St. Louis September 30, 1804. There were fifteen deputies from five districts and from Femme Osage in this latter meeting, which was held in St. Louis. The declaration was signed by the president and secretary of the convention on the 30th and the authenticity of their signatures was certified by Amos Stoddard, Captain and First Civil Commandant in Upper Louisiana, who added "that respect ought to be paid to what they affirm." [21] The declaration of the fifteen delegates of Upper Louisiana simply stated that "Mr. Augustus Chouteau" and "Mr. Eligius Fromentin" had been "unanimously chosen" to act "as the deputies, delegates, and agents, general and special, for the inhabitants of Louisiana, for the purpose of presenting to the honorable the Congress of the United States" the "humble petition" aforesaid. Of the sixteen names of the delegates attached to the "petition," the document first referred to above, thirteen are the same as are affixed to the "declaration." There was also a slight change in the apportionment of the delegates who signed the "declaration:" there being one each from New Madrid and Femme Osage; four from Cape Girardeau; two from Ste. Genevieve; four from St. Louis and dependencies; and three from St. Charles and dependencies.[22]

This memorial or petition as adopted and transmitted to Congress by Auguste Chouteau, was quite different from the

[21] *Am. State Papers, Misc.*, I. 404f.

[22] Houck gives the names of eighteen delegates who signed the petition dated September 29, 1804. This authority seems to have combined the names of all the delegates who signed this petition with the two new members who signed the "declaration" of September 30, 1804. *Cf.* Houck, *Hist. Mo.*, II. 391.

one originally prepared. No early public document of Missouri down to the framing of Missouri's first constitution in 1820 and the Solemn Public Act of Missouri's First Legislature in 1821, has a more interesting history than this one. It involved the first successful wire-pulling in Missouri history, and had it not been for an unnamed school-master, might have resulted very disastrously for Missouri. The inner history of this remarkable document is set forth in a letter of Rufus Easton, dated at St. Louis January 17, 1805, to President Jefferson. He wrote that immediately after the Act of Congress of 1804 became known in Missouri, about twenty of the inhabitants of St. Louis assembled with a view to appoint a committee which was to call a convention of delegates from the different districts, and that this convention was to form a plan of government for upper Louisiana.[23] The whole affair seems to have been arranged by the French inhabitants, as no American was invited, although there was a number of prominent ones here. It was so slated that a majority of the delegates to be selected was to be of the French interest by having them elected by committees who in turn were chosen principally by French villages. How successfully the plan worked is evident from the result of the election. Of the sixteen signers of the "petition," seven were Americans and nine Frenchmen; and of the total eighteen signers of both documents, nine were Americans and nine Frenchmen. The name of Stephen Byrd, who was a delegate to the Constitutional Convention of 1820, appears in the "declaration" as a delegate from Cape Girardeau. Eligius Fromentin, one of the delegates from New Madrid, seems to have been the framer of the "petition," as he is credited with being the most learned. In 1812 this man was one of the first United States Senators from the State of Louisiana. Practically all the French and American delegates were men of wealth and held large land tracts, and this placed them in perfect accord regarding the Spanish land grants.[24]

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[23] *Op. cit.* Easton said that these twenty inhabitants met on April 2, 1804, to peruse the bill of Congress of March 26. The date of this meeting, as given, may be correct, but, if so, it was the proposed bill that was perused, since the law of March 26 could not have reached St. Louis by April 2.

[24] Houck, *Hist. Mo.*, II. 39ff.

The original petition drafted by this convention recommended in reality a "gouvernement militaire." It provided that they have a Governor residing in the territory possessing both civil and military jurisdiction; that there be Commandants for each district possessing like powers, with an appeal to the Governor in certain cases; that there be no trials by jury "except in such cases as in the opinion of the Governor or Commodant justice should absolutely require it for special cause to be shown;" and that the practice of lawyers be entirely prohibited. It compared the Governor and Judges of the Indiana Territory to "foreign Bashaws—to Pro-praetors and Pro-Consuls under the more modest name of Governor and judges sent here to rule over the people and to write liberty as had been done in Venice upon our prison walls—;" and declared that the treaty of cession had been broken; and "a motion was made by one of the members to call upon the Emperor of France thro' his Ministers to enforce a fullfillment."

This draft of the petition was presented to Captain Stoddard, who made several slight changes in it so as to obtain for it a reading in Congress. It was then again considered by the convention and singularly failed to pass. Easton gives the following reason for this failure: "But for a person who resided some years within the United States in character of a schoolmaster who understands the French language, catching at the popular declamation of some members of Congress—Governed by the principles advanced in the memorial of Orleans and fired with ambition to distinguish himself in the political world this original plan would not have been changed—The flame of his eloquence and unparallelled knowledge of American politics changed the tone to the whole system and the plan was to ridicule the Majority of Congress for their *professions* of Republicanism and *boasted* love of liberty—." [25]

After the petition had been changed to its present and final form, it was entrusted to Chouteau to take to Washington. There is little doubt that the wealthy French inhabitants fav-

[25] Easton's Letter, *op. cit.* Cf, also Fortier, *Hist. La.*, III. 16f., and *Am. State Papers, Misc.*, I. 396ff.

After careful searching we have been unable to ascertain who this unique school-master was.

ored a military government without civil law and lawyers. Chouteau had presented his views for such a government to Gallatin during the previous summer of 1804, when many of the leading Frenchmen of Louisiana District were in Washington. Gallatin wrote to President Jefferson regarding this interview with Chouteau, and stated, that while he respected the zeal and ability of the Frenchman, he did not endorse his views and those of his business associates. It is by no means improbable that when Chouteau carried this democratic petition of September, 1804, to Washington, he still pleaded for the military system. The democratic ideals of Jefferson, however, made this plea a vain one, and nothing more was heard of the "gouvernement militaire." [26]

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[26] Houck, *Hist. Mo.*, II. 400.

The following valuable letter is copied from note No. 163, p. 355, vol. II., of Robinson, *Louisiana*, 1785-1807: "The following extract from a letter (entitled Separate observations") dated St. Louis, November 4, 1804 (conserved in the Bureau of Rolls and Library, Department of State, Territorial Papers, vol. I., "Louisiana"), shows conditions in Upper Louisiana or Louisiana Territory:

"I conceive it may not be improper to mention some circumstances concerning the Petition from the Committee held in September last at this Place, before my arrival, for tho' I have not read that Memorial I have heard it much spoken of, and I have reason to think a Paper, said to be a copy of it, may have been sent to the public printer for insertion, in which case it will be found different from the original, that pretended having been taken from the first draft of it before its ultimate correction. It seems the act of Congress of March last concerning Louisiana created some discontent in the minds of People here, they wished and expected a Government of their own. It hurt their pride to be made dependent on Indiana for officers and Laws, because their population and territory are much more extensive than those of their neighbors. They conceived the act of Congress infringed some of the Rights insured to them by the Treaty, placing them in a more degraded situation than other territories of the United States. They formed a Convention in which a Committee was chosen to draw up a Petition to Congress. The Member who made the sketch of the Memorial was sent out before my arrival and I have not seen him, but I am told he is a man of warm passions and I conceive him to be probably of a character such as I have known in the French Revolution, who allowed their exalted ideas to run away with their understanding and could not distinguish between the true principles of liberty, and those leading to Anarchy and despotism . . . I have a particular satisfaction at the time in saying that the inhabitants are much pleased with Govr. Harrison now here. His affability and easy access form a strong contrast with what they had been accustomed to—all the *disinterested* sensible men among them are glad of the change of Government, but there are some, as you will easily believe who have prejudices which time and experience will wipe away—there are others who enjoyed, or were directly concerned in, extensive privileges, or had certain advantages which attached them to the former system. I am speaking of the French part of the inhabitants, whose sentiments I know best by their considering me as one of themselves on account of the language and my very long residence in France. The appearance of hostilities—an idea many of them have of this part

Within two months after this first petition had been presented to Congress, an act was passed on March 3, 1805, which remedied most of the objections and granted some of the requests set forth by the St. Louis convention of September, 1804.[27] It was rather satisfactory to the French inhabitants, as it established a separate centralized form of government. The act provided: (1) that the "District of Louisiana" be changed to the "Territory of Louisiana;" (2) that this territory be separated from the government of Indiana territory; and (3) that a new government of the Territory of Louisiana be established. As Missouri by this act became a territory of the lowest grade and from this stage gradually advanced to statehood, it is a matter of importance to notice the plan of government outlined by this second organic act of Congress relating to Missouri.

The executive power was lodged in the hands of the Governor, whose tenure was appointive by the President of the United States, whose term was three years, and who must reside in the territory. His powers were wide, being both executive and legislative in their scope. He was commander of the militia, superintendent *ex-officio* of Indian affairs, had the power of appointment and command of all officers in militia below the rank of general officers, could grant pardons and reprieves under certain limitations, could divide the territory into districts where the Indian titles were extinct, and appoint magistrates for civil and military purposes. Associated with the Governor was a Secretary, whose duties were clerical, and who became governor when that office was vacant. His term

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of the country being about to be receded to that nation for the Floridas, are topics often brought forward which have tended to show me the real inclinations of some and they open their minds with less reserve by not considering me in the light of a stranger."—Letter unsigned—"From a man who went up Mississippi to become acquainted with Peltry trade."

The dislike of lawyers on the part of the French inhabitants is also seen in the Historical and Political Reflections on Louisiana by Paul Alliot. (Robertson, *op. cit.*, I. 135, 137.) Speaking of St. Louis that physician says:—"The magistrate who renders justice does not molest or persecute any citizen. He is a father whose entrails are at all times open to his children." "None of those bloodsuckers known under the names of bailiffs, lawyers, and solicitors are seen there." (This was written before the transfer in 1803.) (*Cf. ibid.*, II. 319.)

[27] *Stat. at Large*, II. 331f. Passed at second session of Eighth Congress, March 3, 1805, and went into effect July 4, 1805.

was four years, and he was also required to live in the territory. His tenure was the same as that of the Governor.

The legislative power was vested in the Governor and the three territorial Judges, or a majority of them. This body or Legislative Council had power to establish inferior tribunals and prescribe their duties. It was empowered to make all laws conducive to the good government of the inhabitants of the territory provided no law should be enacted inconsistent with the Constitution and Laws of the United States or abridging the religious freedom of the inhabitants or dispensing with trial by jury in both civil and criminal cases under certain regulations. All laws passed by this council were subject to the ratification of the President and Congress.

The judicial power was vested in three Judges appointed by the President for four years, and in such inferior tribunals as might be established by the Legislative Council. The three Judges or any two of them were to hold two courts annually in the Territory and to have the same jurisdiction as that formerly held by the Judges of Indiana Territory.

The compensation for the five foregoing officers was the same as obtained in Indiana Territory. All were required to take an oath of allegiance to the United States. It was expressly provided that all existing laws were to remain in force until modified.

Such are the general provisions of this act. It did much to mollify the inhabitants of Upper Louisiana, and, although not granting them the elective tenure nor a delegate in Congress, it was far more satisfactory than the previous act. They now had a territory and a government that were not united to or under any other subdivision of the United States, and, although their new officials were appointed in Washington, and subject in every express way to the national government, still they were required to reside in the territory, and this alone was worth a great deal to the inhabitants of a pioneer country where distance played such an important part in law administration.

During the following half decade the Territory of Louisiana made rapid strides in development. The increase of popu-

lation alone justified a change in the governmental machinery provided for by the act of 1805. The population of the territory in 1810 had risen to 19,976, being distributed among the five districts as follows: Cape Girardeau, 3,888; New Madrid, 2,296; St. Charles, 3,505; Ste. Genevieve, 4,620; and St. Louis, 5,667.[28] This remarkable growth in population naturally created a desire for a higher grade of territorial government. It was the wish of a large majority of inhabitants of this territory that the American policy of self-government be applied to them. This wish was soon revealed in the numerous petitions presented to Congress on that subject. Never in the history of Missouri, during neither the French, Spanish, American, Territorial, nor State Period, have her inhabitants framed, signed, and presented so many petitions to Congress as issued from the Territory of Louisiana from 1810 to 1812 inclusive. But, to us even this seems less remarkable than is the failure heretofore of every writer on Missouri history to notice a single petition of that time. This silence can be construed only as the result of a lack of information, since the greatest importance always attaches to those documents that reflect the sentiment of so large a district of people in regard to a change in their organic law. At least fifteen of these petitions appeared, twelve of which are still in existence. These twelve requested that the Territory of Louisiana be raised from a territory of the first to one of the second grade. One of the other petitions, very significantly, prayed that no alteration be made in the form of government.[29]

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[28] *U. S. Census*, 1900. *Pop.*, I. 27f.

[29] Six hundred and thirty-six signatures are attached to five of these petitions, the number of signatures on the other seven petitions were not counted. These petitions were first noticed by us in the *Annals of Congress*. We had always wondered at the silence of Missouri historians on this point, and could hardly be convinced that Missouri became a territory of the second grade without there having been an application for same on the part of the inhabitants of Louisiana Territory. An examination of the *Annals* proved our conclusion to be correct. Mr. Parker's *Calendar of Papers in Washington Archives relating to the Territories of the United States* (Carnegie Institution, 1911) showed that these petitions were still in existence. Finally, after having made futile application to the House Librarian we interested Dr. J. Franklin Jameson who at our request placed Dr. N. D. Mereness on the trial of these documents. Dr. Mereness not only located all of these petitions but also made copies of same. These copies are now in the library of *The State Hist. Soc. of Mo.* The original documents are still preserved in the House Files in Washington, D. C.

On January 6, 1810, there was presented to Congress "a petition of sundry inhabitants of the Territory of Louisiana, praying that the second grade of Territorial Government may be established in said Territory." This was probably one of the first of these petitions and, we think, was drawn up and signed in 1809. It based its request for a higher grade of territorial government on the treaty of cession, on the unsatisfactory exercise of both legislative and judicial powers when vested in the same persons, and on the large size of the militia in the Territory of Louisiana compared with the militia in either Indiana or Mississippi territories. This petition was referred to a committee on January 9, 1810, which reported, on January 22d, a bill "further to provide for the government of the Territory of Louisiana." This bill after its second reading was referred to the Committee of the whole, in which it was not brought up during that session.[30] On January 15, 1810, an exact copy of

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[30] *Annals of Congress*, I. 1157, 1253. Following is a copy of this petition as found in the House Files by Dr. Mereness:

[Dec. 1809?] Petition of sundry inhabitants of the territory of Louisiana—Referred Jan. 9th, 1810. [No. 3458 in Parker.]

[This petition is as follows:] To the hon*ble* the Sen. and Ho. of Reps. of the U. S., in Cong. assembled

The petition of the undersigned inhabitants of the Territory of La., most respectfully, sheweth.

That they have waited with anxious but silent expectation for the arrival of that period, when pursuance of the treaty by which Louisiana was ceded to the United States, they are to be admitted "according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of Citizens of the United States." These rights they do humbly conceive cannot be enjoyed while the judicial and legislative powers are vested in the same persons. Where powers are combined which the constitution requires should be seperate, [*sic*] and where the maker of laws, is also obliged to expound, and to decide upon them. Your petitioners are fully impressed with the idea that legislative powers, are never better, nor more satisfactorily exercised than when committed to those persons who are elected for that purpose by the people themselves, whose conduct must be regulated by those very laws thus made. The inhabitants of the territory of Orleans, have already obtained those rights which your petitioners now ask, and to which they deem themselves also entitled. The last returns of the militia of this territory will be found to exceed those of the Indiana and Mississippi territory, and the number is daily increased by rapid emigrations to this territory. Confiding therefore, in the justice and wisdom of your hon*ble* bodies, they most respectfully ask, that a law may be passed for enabling the inhabitants of this territory to have and enjoy the rights and privileges consequent upon a second grade of ter*l* gov't, and that the same may be established in this territory.

And your petit*rs* as in duty bound will ever pray. [This petit*n* is printed] [76 signatures]

the foregoing petition was referred in the House. This latter document had attached to it about two hundred and seventy-three signatures, the former had seventy-six.[31] On February 22, 1810, several petitions to Congress "from a number of the inhabitants of the Territory of Louisiana" were presented to the Senate. Their purpose and wording were, we infer, the same as the other two presented to the House.[32] Another duplicate petition, of this year, bearing only nine signatures was presented to the House,[33] but nothing was accomplished by any of these at this time.

At the third session of the Eleventh Congress, on January 3, 1811, a committee, appointed by the House on December 11, 1810, "presented a bill further providing for the government of the Territory of Louisiana." After a second reading the bill was lost in the Committee of the Whole and this Congress expired without passing an act on this matter.[34]

During the summer of 1811 numerous petitions of this kind were framed and signed in Louisiana Territory. Some of these originated in the Arkansas country and others in that part that lies within the present boundaries of Missouri. They were all similar in tone and argument to the 1810 petitions. The desire for a second grade of territorial government was strong, and this wish was strengthened by the still unsettled or unsatisfactorily settled condition of the land claims. The inhabitants of Louisiana Territory not only wanted a voice in their territorial or local government, but were equally desirous of having their wishes voiced in Congress by a regularly elected territorial delegate.[35] Not only were many of these petitions

[31] *Ibid.* Found in House Files.

[32] *Ibid*, p. 578.

[33] *Ibid.* Found in House Files.

[34] *Annals of Congress*, 3d Sess., 11th Cong. (1810-11), p. 486.

[35] Sometime during the session of 1811-12 five petitions were presented to the House. Each of the five is as follows according to Dr. N. D. Mereness:

[Referred 1811-12.] Each of the "five petitions" listed by Parker under No. 3468 is in part as follows: To the Honble the sen. & Ho of Reps—Sheweth; That convinced as well of their rights in pursuance of the treaty which ceded La. to the U. S., to be admitted "according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of the citizens of the United States," as of the advantages resulting from representative government, which rights and advantages have not been extended to them, They hope indeed, that as a free people, so far as the policy of territorial government will

presented to the twelfth Congress at its first session but on December 27, 1811, there was also presented to the House "a certified copy of a presentment by the grand jury of the 'District of St. Charles,' in said Territory, representing that the second grade of Territorial government ought to be extended to the Territory; that the judges of the general court ought to reside in the Territory; and that further and equitable provisions

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admit, they may have a partial voice in the government which they support. Their sister territories of Orleans, Mississippi and Indiana, are fast approaching to political manhood, under the fostering hand of the General Government; while La. with a large and fast increasing population have not been admitted to the enjoyment of the same political blessings; all the powers of the government, as well executive and legislative, as legislative and judicial, are blended together, not only contrary to the treaty and "*Federal Constitution*," but also the political safety and happiness of the people. A large majority of your petitioners depend on agriculture for support, *whose claims to land* form the principal hope of themselves and families, and more than two-thirds of their claims have been rejected by the board of commiss*rs*; from whose official representations they have little to hope, and much prejudice to fear; for these reasons which are all important to your petitioners, they now most respectfully ask of your hon*ble* body the passage of a law, which will admit them into what is denominated the second grade of territorial govt, (provided no better can be devised) which entitle them to a delegate in Congress by whom they can make known their unfortunate situation. And your petitioners as in duty bound will ever pray. [Found in House Files.]

Another petition referred December 27, 1811, is an exact copy of the above (House Files, Parker, *op. cit.*, No. 3480.); another duplicate was read January 6, 1812, (Senate Files, Parker, *op. cit.*, No. 3481.); and another bearing one hundred and ninety signatures was also presented to Congress. (House Files, Parker, *op. cit.*, No. 3487.) The following petition, dated Arkansas, 9th Sept. 1811, was referred Dec. 7, 1811:—

Petition (dated Arkansas, 9th Sept*r* 1811) for the Second grade of Government.—No. 3472 in Parker—Referred Dec. 7, 1811 to Com*ee* of the whole House on the bill for the Govt of said Territory. Bill postponed in the Senate April 22, 1812.

This petit*n* is as follows: To the Hon*ble*—The Petition of the undersigned inhabitants of the Territory of La. Respectfully sheweth: That convinced as well of their rights (in pursuance of the Treaty which ceded La. [*sic*] to th[e] U. S.) to be admitted according to the Principals of the Federal Constitution to the enjoyment of all the rights, advantages, and immunities of Citizens [o]f the U. S.—as of the advantages resulting from a representative Gov't, which Rights and Advantages have not been extended to them—they hope indeed that as a free People so far as the Policy of Ter*l* Gov't will admit they may have a Partial Voice in the Govt wch [which] they support. Their sister Territories of Orleans, Mississippi and Indiana are fast approaching to Political Manhood, under the Fostering hand of the Gen'l Gov't, while La. with a large and fast increasing Population, has not been admitted to the enjoyment of the same Political blessing. —all the Powers of the Gov't as well Executive and legislative, as Legislative and Judicial are blended together not only Contrary to the Treaty and Federal Constitution but also to the political safety and happiness of the People.

A large majority of your Petitioners depend on Agriculture for support whose claims to lands form the Principal hope of themselves and families and more

ought to be made in favor of rejected land claims." [36] These were referred and undoubtedly were of the greatest influence in the final passage of the law of June 4, 1812.

Although the local pressure on Congress favoring a higher grade of territorial government in Louisiana Territory was strong, we are hardly surprised to discover some undercurrent of opinion in this district that opposed raising the status of the territory. We have noticed how the act of 1805 was satisfactory to most of the inhabitants of Upper Louisiana especially to the French portion, and also why they preferred a centralized form of government. Wherever the French influence was strong whether in Indiana Territory, Louisiana Territory, or the Territory of Orleans, the preference of that race has been for few officials, concentration of power in the hands of a few, and either an indifference or opposition to self-government unless some vital problem could be solved by no other means.[37] In Louisiana Territory the special problem that concerned many, including both French and American inhabitants, was the land claim or land grant problem. Many claims had not been settled and many had been refused. The settlers, both old and new, thought that more lenient laws regulating these claims would be passed if only the Territory had a Delegate in Congress. There was also a sincere, strong sentiment for self-government in Louisiana Territory, but we believe that the opposition to this self-government or representative government would have been

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than two thirds [o]f their just Claims have been rejected by th[e] board of Commissioners from whose official Representations they have little to hope.

For these reasons wch are all important to your Petitioners they now most respectfully ask of your Hon*ble* body, the Passage of a Law wch will admit them into what is denominated the second grade of Ter*l* Govt, wch will entitle them to a delegate in Cong. by whom they may make known their unfortunate situation—and your Petit*rs* as in duty bound will ever Pray. [88 signatures. The original of this petit*n* is not printed. Found in House Files]

Cf. also Annals of Congress, p. 557.

[36] *Annals of Congress, I. 584.*

[37] Indiana Territory in 1800 was largely French. They cared nothing for self-government. The influx of American settlers created a desire for a higher grade of territorial government. The French joined in this demand for self-government since through it they could make slavery more secure, which was a great object to be attained owing to the provisions of the Northwest Ordinance on that point. *Cf.* also Webster, Homer J., *William Henry Harrison's Administration of Indiana Territory*, in *Ind. Hist. Soc. Pub.*, IV. 202ff. *Cf.* Chapter VI of this work on the peculiar sentiment exhibited in Orleans Territory on the eve of framing a State Constitution.

stronger than it was had not there been pressing for settlement hundreds of land claims. At all events we have record of one remonstrance and petition being presented to Congress that opposed a change in government. On December 7, 1811, there was presented to the House a remonstrance and petition of sundry inhabitants of St. Louis "stating the many injuries and inconveniences which would result from a change in their form of government, and praying that no alteration may be made in their said form of government." [38] This was referred to a committee from which it was never reported. The demand of the inhabitants of Louisiana for the higher grade of territorial government had become too insistent for Congress to longer delay.

In the year 1812 affairs reached a focus that made necessary at least some kind of action. The Territory of Orleans was admitted into the Union April 8, 1812, under the name of the State of Louisiana. This made expedient, though not essential, as some authorities have supposed, a change in name of the Territory of Louisiana. Action was taken by Congress, and on June 4, 1812, a law was passed changing the name of the Territory of Louisiana to the Territory of Missouri.[39] It was this law which gave to Missouri her present name; and it is very probable that had the Territory of Orleans taken the name of State of Orleans on its admission into the Union, then the Territory of Louisiana would have retained its name and in 1821 would have been admitted as the State of Louisiana. This act of June 4, 1812, raised Missouri to the second grade of territories and not only gave the inhabitants control of the lower house of the Legislature through the elective tenure and the election of a Delegate to Congress but also provided in section fourteen for a bill of rights.[40]

The government provided for by this act was more complex in character that that in the act of 1805. The executive authority was still vested in a Governor whose term, tenure, and powers were the same as before, except that he had some

[38] *Abridg. of Debates of Cong.*, IV. 434.

[39] *Stat. at Large*, II. 743-747; *Cf.* also *Mo. Ter. Laws*, I. 8-13.

[40] There are sixteen sections in this law, but they will not be taken up here in detail.

enumerated powers, including that of convening the legislature on "extraordinary occasions." His veto power was absolute. No change was made in the term, tenure, and duties of the Secretary.

It was in the legislative branch of the new government that the greatest changes are noticed. The legislative power was vested in a bicameral body called the "general assembly." This was composed of a Legislative Council and a House of Representatives. The former consisted of nine members, five making a quorum, appointed for five years by the President of the United States from a list of eighteen persons made by the territorial House of Representatives. Provision was made for filling vacancies by the President appointing one of two persons nominated by the lower house. Their qualifications were: that they should have resided in the territory for at least one year preceding appointment; that they should be at least twenty-five years of age; that they should have property of at least two hundred acres in the territory. They were disqualified from holding any other office of profit under the territorial government except that of justice of the peace. It was in the house of Representatives that the greatest innovation was made. This body was composed of representatives elected for two years by the people of the territory. The appointment was on the basis of one member to every five hundred free, white, male inhabitants until the number of representatives reached twenty-five, when the ratio was left under the regulation of the General Assembly. The qualifications for representatives were lower in nearly every respect than for members of the Council: the age qualification was twenty-one years; the residence qualification was the same as in the case of members of the Council; and the property qualification required one to be a freeholder in the county from which he was elected. Vacancies were filled by a new county election on writ of the Governor. Annual meetings of the General Assembly were provided for. The place of meeting was at St. Louis, and the time the first Monday in December unless the General Assembly set a different date. The Governor was empowered to lay off

the territory into convenient counties for the election of thirteen representatives.

The electors of representatives consisted of all the free, white, male citizens of the United States who were twenty-one years of age, had resided in the territory twelve months before the election, and had paid a territorial or county tax assessment made at least six months before the election. It was provided in the act of 1812 that all free, white, male persons who were inhabitants of Louisiana on December 20, 1803, and all free, white, male citizens of the United States who had immigrated to Louisiana since December 20, 1803, or who might hereafter do so, if otherwise qualified, could hold any office of honor, trust or profit in the territory under the United States or the Territory, and vote for members of the General Assembly and a Delegate to Congress during the temporary government provided for by that act.

The powers of the General Assembly were large, comprising the power to make laws, civil and criminal; to establish inferior courts and prescribe their jurisdiction; to define the powers and duties of the justices of the peace and other civil officers of the territory; to regulate and fix fees, etc. There were certain express limitations placed on their power, however, that are important to notice. All bills had to be passed by a majority of each house and receive the approbation (signature) of the governor. They were by implication prohibited from passing any acts which would be inconsistent with the large number of privileges and rights reserved to the people and enumerated at some length in section fourteen of the law. This section fourteen is a very interesting paragraph, as it is the first bill of rights that Missourians ever had excepting those guarantees in the United States Constitution and is an epitome of the one included in the constitution of 1820. The General Assembly was also prohibited by express provision from interfering with the primary disposal of the soil of the United States, etc., and from levying any tax or impost on the navigable waters in or touching the territory.

The judiciary was composed of a Superior Court, inferior courts and courts of justices of the peace. The Superior Court

alone was set forth in detail, the others being left under the regulation of the General Assembly and Governor. This court was the same in composition and in term and tenure of members as that provided for in the act of 1805. Certain regulations were provided as regards its jurisdiction, and power was granted it and the inferior courts to appoint their clerks.

Some miscellaneous provisions were also set forth that are important. All officials were required to take an oath to support the Constitution of the United States and discharge faithfully the duties of their office. The citizens of the territory were given the right to elect one Delegate to Congress. Schools and education were urged, and encouragement and aid promised from the United States lands in the Territory. It was provided that the acts of 1804 and 1805 when inconsistent with this act were repealed.

Pursuant to the power granted him in the seventh section of the act of 1812, Benjamin Howard, Governor of the Territory of Louisiana, by proclamation issued October 1, 1812, divided the new Territory of Missouri into the five counties of St. Charles, St. Louis, Ste. Genevieve, Cape Girardeau, and New Madrid, and gave them their boundaries.[41] Provision was made for the election from these counties of territorial representatives to the General Assembly and also a Delegate to Congress. Appended to this proclamation was a statement setting forth the qualifications of representatives and electors—which was taken from the act of Congress of June 4, 1812. Thus was set in working the new government of the Territory of Missouri.

An attempt was made to amend the law of 1812, and on January 7, 1813, on motion of Mr. Hempstead (of Missouri) a committee was appointed by the House of Representatives "to inquire if any, and if any what, amendments are necessary to be made" to that act.[42] On January 29, 1813, this committee reported and recommended no alterations.[43] The problem suggested to the committee was to settle the doubts that some entertained as to whether Missouri's Territorial Delegate to

[41] *Am. State Papers, Misc.*, II. 202f; Scharf, *op. cit.*, I. 557f.
[42] *Annals of Congress*, p. 618.
[43] *Ibid.*, pp. 929f; *Am. State Papers, Misc.*, II. 201f.

Congress, who had been elected on November 2, 1812, in pursuance of the act of Congress of that year, could hold his seat after March 3, 1813. The committee decided that as he was elected for two years, he could hold his seat for that time, and that no alteration in the law of 1812 was necessary, as it appeared perfectly clear on this point.

Population kept increasing rapidly in Missouri. Lawrence county was established by the Territorial Legislature January 15, 1815,[44] and just a little over a year later Howard county, the "mother of counties" and one of the empire counties of Missouri, was erected by act of January 23, 1816.[45] On January 21, 1816, on motion of Mr. Easton in the House of Representatives, the Committee on the Judiciary was instructed to inquire if any, and what, alterations were necessary to be made in the act entitled "An act providing for the government of the Territory of Missouri" approved June 4, 1812."[46] This committee on March 6, 1816, reported a bill to alter certain parts of the act of 1812, which without any amendment finally became the organic act of Congress of April 29, 1816, by which Missouri became a territory of the highest grade.[47] By this law, the elective tenure was also applied to the Legislative Council, one member being elected from each county. The term was reduced to two years and qualifications remained the same as in the act of 1812. A majority of the members constituted a quorum. The regular sessions of the General Assembly were changed from annual to biennial sessions. Everything else of the act of 1812 remained unchanged except the provisions relating to the judiciary. It was the provisions in this act of 1816 relating to the judiciary that was its most objectionable feature to Missourians, as is expressly set forth in the very earliest petitions for statehood in 1817.[48] The General Assembly was authorized to require the judges of the superior court to hold superior and circuit courts; to appoint the times and places for the same; and to make rules and regulations regarding these courts. The

[44] *Mo. Ter. Laws*, pp. 354ff.
[45] *Ibid.*, pp. 460ff.
[46] *Annals of Congress*, pp. 1047, 1049, 1358, 1362.
[47] *Stat. at Large*, II. 328; *Mo. Ter. Laws*, p. 14.
[48] This will receive further consideration in the chapter following.

circuit court was to be composed of one of the said judges and to have jurisdiction in all criminal cases, exclusive original jurisdiction in capital cases, and original jurisdiction in all civil cases of $100.00 value or over. The superior and circuit courts were to possess chancery powers as well as common law jurisdiction in all civil cases, provided that in matters of law and equity, in all cases, appeal lay from the circuit courts to the superior court of the territory.

The year following this law of Congress of 1816, which made Missouri a territory of the highest rank, saw the inhabitants here petitioning Congress for that greatest of all boons—the privilege of statehood. It will be our purpose in the next chapter to give, in the first place, a short history of these efforts on the part of Missouri's pioneers to obtain permission of the National Legislature to frame a state constitution; and, in the second, to sketch the struggle in Congress itself over this question from 1818 to 1820. It is hardly an exaggeration to say that seldom in the history of this nation since the adoption of the Constitution has there been a purely domestic question, except of course the Civil War of 1861-65, that has so stirred the country from border to border; has been so ominous in so many of its phases; that for so many months literally shook the foundations of the United States and brought forth declarations and prophecies of the most calamitous character from the mouths and pens of men who even today rank foremost in the galaxy of American Statesmen and authors, as the famous Missouri Question. It will not, however, be our purpose in this book to do more than merely give a summary of that question as it was acted upon by Congress.

CHAPTER II.

MISSOURI PETITIONS FOR STATEHOOD AND THE STRUGGLE IN CONGRESS

The earliest agitation for the admission of Missouri as a State began in the latter part of 1817.[1] After the war of 1812 the population of Missouri grew rapidly, and corresponding with this growth the desire of the people for an independent State government became strong.[2] In the fall of 1817 this desire for statehood found expression in a number of memorials addressed to Congress and signed by the Missouri inhabitants, acting purely in their capacity as citizens. It is certain that there were a number of these petitions; even today there are two in existence.[3]

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[1] Scharf, *op. cit.*, I. 561. In note one on this page appears the following extract from the *Missouri Gazette* (St. Louis) dated October 11, 1817: "We have seen in the last *Emigrant* the copy of a petition stated to be 'The Memorial of the Citizens of Missouri Territory,' praying to be admitted into the Union of States within certain limits." (Note: The *Western Emigrant* was a newspaper published in St. Louis in 1817, succeeding the *Western Journal*, which began publication in 1815. Later it changed its name again and became known as the *St. Louis Enquirer*.)

There is no mention of a petition earlier than 1817 by any of the writers of Missouri or of St. Louis history, such as Switzler, Davis and Durie, Houck, Carr, Rader, Billon, and Scharf. Some of these failed to notice the memorials of 1817, but even Mr. Houck, who made a special study of this period, gives the date of the earliest petition as 1817.

Copies of Resolutions of the Missouri Territorial General Assembly to Congress, dated December 1815 and January 1816, are still in existence in the Bureau of Rolls and Library, Department of State, Washington, D. C., but Mr. Tonner, Chief of the Bureau, informs us that he has examined these resolutions and that they do not refer to statehood, but to entirely different subjects. (Letter of Mr. J. A. Tonner, January 29, 1914, in The State Historical Society of Missouri.)

Cf. also Parker, *op. cit.*, p. 239.

[2] Houck, *Hist. Mo.*, III. 243. As our references to Houck will hereafter be entirely to his History of Missouri, we will refer to that work thus: Houck, *op. cit.*

During the war the tide of immigration into Missouri decreased in volume, but after peace was proclaimed, the rush of settlers from Kentucky, Tennessee, Virginia, and the Carolinas to that territory was greater than ever. (See *Missouri Gazette*, October 26, 1816.)

[3] We are certain that a number of these memorials were identical, and were circulated over the entire territory. Internal criticism of these documents produces several reasons which incline us to come to this conclusion: first, the two existing memorials of 1817 are so worded as to have allowed any citizen of Missouri to sign them, and consist of a comparatively brief printed petition with a

It is known that on January 8, 1818, the Speaker of the House of Representatives of Congress presented "petitions" from sundry inhabitants of Missouri Territory, praying that the said Territory might be erected into a State and admitted into the Union on an equal footing with the original States;[4] that on February 2, 1818, John Scott, Missouri's Delegate to Congress, presented a similar petition from the inhabitants of Missouri Territory;[5] and on March 16, 1818, Scott again presented "petitions" of sundry inhabitants of Missouri Territory, praying for admission, which, together with the "petitions" of a similar nature, "heretofore presented at the present session," were referred to a select committee composed of seven men, Scott being chairman.[6] This committee, on April 3, 1818, reported to the House a bill to authorize the people of the Missouri Territory to form a Constitution and State government, and for the admission of such State into the union, etc. This bill was read twice and committed to a Committee of the Whole, where it lodged during that session of the Fifteenth Congress.[7]

The two memorials of 1817 still in existence are valuable and interesting documents. The subject matter of the one in the Library of Congress is identical with the one in the library of The State Historical Society of Missouri, and is signed by sixty-eight persons, most of whom lived in Washington county, Missouri.[8] Two of these sixty-eight names appear among the sixty-nine names attached to the other memorial. Among the former, appears the signature of John Rice Jones; on the other,

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small blank below for signatures (an additional sheet of paper covered with signatures is attached to the one in *The State Historical Society of Missouri*); second, on the back of the one in The State Historical Society of Missouri is written in script, "No. 5," and a little to the right of this is written, "69." The "No. 5" would perhaps have little significance if it were not for the "69." This memorial was signed by sixty-nine persons, and it is not improbable that this petition was the fifth in circulation.

[4] *Annals of Congress*, I. 591. These were laid on the table.

[5] *Ibid.*, p. 840. This also was laid on the table.

[6] *Ibid.*, II. 1391. Mr. Scott also presented a petition of sundry inhabitants of the southern part of the Territory of Missouri, praying for a division of the said territory, which was referred to the same committee. *Ibid.*, p. 1392.

[7] *Ibid.*, p. 1672.

[8] Houck, *op. cit.*, III. 245. Mr. Farnum, Secretary to the Librarian of Congress, in a letter to the author dated January 23, 1914, stated that the one in that Library has sixty-eight manuscript signatures; Houck, idem, says sixty-seven.

appears that of John Hutchings. Both of these men were later delegates from Washington county to the first constitutional convention of 1820. The first eighteen signatures of the sixty-nine are included in an ink brace, and written on the margin of the page and within the brace are these words: "All the Grand Jury of the Circuit Court of Washington county October term, 1817." The entire document contains about seven hundred and fifty words, and might naturally be divided into two parts.[9]

First are set forth Missouri's reasons for statehood, including the following: (a) the population of Missouri had reached 40,000; Tennessee, Ohio and Mississippi had each been admitted with a smaller population; (b) the treaty of cession guaranteed statehood as soon as it could be "granted under the principles of the Federal Constitution;" (c) Missouri's training as a territory of the first and second class had covered a period of thirteen years;[10] (d) Missouri's loyalty to the Union had been evinced during the War of 1812; (e) the evils of the territorial government were many, including (1) the denial of a vote in Congress, although subject to the indirect taxation of that body, (2) the absolute veto of the governor on the acts of the territorial legislature, (3) the power of the superior court in having primary and final jurisdiction in most civil and criminal cases, and (4) the restricted powers of the territorial legislature which were confined to the passage of local laws, "owing to the paramount authority of Congress to legislate on the same subject."

Second are advanced arguments for the boundaries of Missouri, being the latitudes forty degrees and thirty-six degrees thirty minutes on the north and south, and the Mississippi River and the Osage boundary line on the east and west.[11] Two-thirds of the memorial is taken up with this subject of boundaries and includes the following arguments: (a) the north-

[9] For a copy of the memorial in *The State Historical Society of Missouri* see Appendix I.

[10] Missouri had really passed through the three grades of territorial organization, besides having been under a military government and also under the government of Indiana Territory.

[11] Houck, *op. cit.*, I. 3. "The Osage boundary on the west was a line extending from Fort Osage north and south about twenty-four miles east of the mouth of the Kansas river."

ern boundary would then correspond with that of Illinois territory and "with the Indian boundary line near the mouth of the River Des Moines;[12] (b) the southern boundary would "be an extension of the line that divides Virginia and North Carolina, Tennessee and Kentucky;" (c) it would leave Arkansas territory a frontage of three and a half degrees on the Mississippi river, give Missouri a like frontage and a medium depth of two hundred miles, and leave the same front "embracing the great River St. Pierre" for a future State to the north of Missouri; (d) these boundaries would "include all the country to the north and west to which the Indian title" had been extinguished, and also include "the body of the population;" (e) they would "make the Missouri river the *centre*, and not the *boundary* of the State" and thus unite in one whole the district to the north and the south of that stream—a condition greatly desired by choice and made doubly expedient by natural location and the complementary resources of these two parts.

For the first time there is set forth in this petition any intimation that the Missouri River had ever been thought of as the northern boundary line of Missouri. That this had already been rumoured, perhaps even advocated, is probable, judging from the serious effort of this memorial to state the objections of the inhabitants of Missouri to this plan. It is evident that the memorialists feared Congress might select the Missouri river as a natural boundary for the State, so they added that they deprecated "the idea of making the divisions of the States to correspond with the natural divisions of the country" and said, "such divisions will tend to promote that tendency to separate, which it is the policy of the union to counteract." It is also interesting to notice the desire of the memorialists to provide for Missouri a large frontage on the Mississippi River, and their implied fear of having a large tract of desert land attached to the new State, whereby a long State running east and west, but narrow from north to south, would be formed.

[12] The memorial is uncertain in its statement of the northern boundary, since parallel forty degrees does not correspond to the Indian boundary line as surveyed by John C. Sullivan in 1816, and as later decided in the United States Supreme Court in 1849. *Ibid.*, I. 14f.

We have already stated that little was accomplished regarding a Missouri bill during the first session of the Fifteenth Congress. However, it was really a matter for congratulation that a Missouri statehood bill had been reported by a committee of Congress so shortly after Missouri had become a territory of the highest rank. This showed that the friends of Missouri who were in Congress would not allow this subject to be kept under cover.

The year 1818 brought forth the only memorial to Congress praying for statehood that was ever adopted by the Territorial Legislature of Missouri. Although in 1817 there were a number of individual statehood petitions in circulation among the inhabitants in Missouri, there is no record of any in 1818, except the memorial passed by the last Territorial Legislature of Missouri, which adjourned in December of that year. During 1819 and 1820, however, there were a very large number of these petitions and remonstrances to Congress drawn by grand juries, public meetings of citizens, and religious bodies in Missouri on the question of statehood, and especially showing the sentiment in Missouri at this time on the question of slavery and the action being taken by Congress.[13]

On November 13, 1818, the Territorial Legislature of Missouri adopted a memorial to Congress praying for statehood, and during the same month they adopted a resolution on the question of United States "donations and appropriations" advantageous to the inhabitants of this State.[14]

The memorial set forth two main arguments for statehood: (1) that the population of the territory was nearly one hundred thousand; and (2) that the limits of the territory were too extensive for the efficient administration of government. Owing

[13] These petitions of 1819 and 1820 being largely of the nature of protests form part of the subject matter of the two following chapters.

[14] "Memorial and Resolutions of The Legislature of The Missouri Territory and A Copy Of The Census of the Fall of 1817: Amount to 19,218 Males—December 8, 1819. Referred to a Select Committee." One of the copies of these documents as printed in Washington, 1819, a six page pamphlet for the use of Congress, is in The State Historical Society of Missouri, and another copy of the memorial may be found in the *Am. State Papers*, Misc., II. 557f. Another copy of the memorial is in *Abridg. of Debates of Cong.*, VI. 381. Houck, *op. cit.*, III. 245, gives the date of the adoption of the memorial as December, 1818; but there is no doubt that this is not correct. See Appendix II for copy.

to both of these reasons, but especially the latter, it proposed a division of the territory. Before taking up the consideration of Missouri's population and the boundaries of the proposed state—a short but rather involved study of itself—the rest of the memorial will be analyzed. The memorialists stated that although there were many grievances of which they might complain, yet most of them were inseparable from a territorial government and were not enumerated. They closed this document by again referring to the question of population which, in the counties of New Madrid, Lawrence, Ste. Genevieve, Cape Girardeau, Washington, St. Louis, St. Charles, and Howard they stated was more than sufficient for admission as heretofore required of other states admitted. The guarantee of admission, as set forth in the treaty of cession, was mentioned, concerning which they said, "much might have been claimed, in justice," etc. The memorial was signed by David Barton, as "Speaker of the House of Representatives," its authenticity being attested by him, and was also signed by Benjamin Emmons, "President of the Legislative Council."

It is difficult to determine the exact figure for the population of the entire Missouri Territory in 1818. Of course that given in the memorial, one hundred thousand, which was undoubtedly intended for the white and black population and excluding Indians, was too high. The increase in population had undoubtedly been remarkable, but it had hardly been great enough to have warranted a jump from 19,976 in 1810 to this figure in 1818, a period of only eight years.[15] The greatest increase had been in the Boone's Lick country which, in 1812, numbered only one hundred and fifty families,[16] and in 1817 contained 3,386 males.[17] The Territorial census which was taken in August and September of 1817, a copy of which was transmitted to Congress by Missouri's delegate, John Scott, gives the total white male population of the territory, exclusive

[15] *U. S. Census*, 1900, *Pop.* I. 27f.

[16] Perkins and Peck, *Western Annals*, p. 750.

[17] *Cf.* Appendix II, which contains copy of census of 1817, and also Billon, *Annals of St. Louis*, 1804-1821, p. 51. Billon makes the mistake of giving the population of Missouri Territory by counties for 1818, which should have been for 1817. The item on Missouri's population which appeared in *Niles' Register* of May 16, 1818, is not trustworthy.

of Arkansas county, as 19,218. This would have made the total white population for that year, excluding Arkansas, between 35,000 and 38,000, which is probably nearly correct, as we know that from 1817 to 1820 the immigration into Missouri was very heavy, and that the white population in 1820 was 55,988.[18] It is quite probable that in 1818 the white population of Missouri Territory excluding Arkansas county was between 41,000 and 44,000, besides a slave population of over 5,000.[19] This was undoubtedly a sufficient population for statehood by comparison either with former states or even with some admitted years after this.

The boundaries asked for Missouri in the legislature's memorial of 1818 included a far greater extent of territory than had been requested in the people's memorial of 1817, and embraced even a larger domain than lies within the present limits of this State. They included all the territory within the present State, except the two northwestern counties, Atchison and part of Holt; a large irregular portion of the northeastern corner of the present State of Arkansas, embracing over five thousand square miles; and a long narrow strip of land on the west, about two hundred miles long by sixty miles wide. If these boundaries had been accepted by Congress they would have enlarged the present State of Missouri from twenty-five to thirty per cent, or in round numbers, about twenty thousand square miles, and today Missouri would contain nearly ninety thousand square miles.

The reasons advanced in the memorial of 1818 for asking Congress to set such large limits for Missouri were: that the fertile districts therein "susceptible of settlement, are small, and are separated and detached from each other, at great distances, by immense plains and barren tracts, which must for ages remain waste and uninhabited;" that "these distant

[18] *U. S. Census*, 1850, p. 665. *Cf.* also *Niles' Register*, XIII. 166. That Missouri was being settled rapidly is shown by the fact that in December 1818, the Territorial Legislature organized eight counties: Jefferson, December 8th, (*Mo. Ter. Laws*, p. 554); Franklin and Wayne, December 11th, (*Ibid.*, pp. 562f, 567); Lincoln, Madison, Montgomery and Pike, December 14th, (*Ibid.*, pp. 572, 576, 580, 585); and Cooper, December 17th (*Ibid.*, p. 594). The white males outnumbered the white females.

[19] *U. S. Census*, 1850, p. 665. The free colored population of Missouri in 1820 was 347 and the slave 10,222.

frontier settlements, thus insulated, must ever be weak and powerless in themselves; and can only become important and respectable, by being united;" and that one of the objects of the memorialists "is the formation of an effectual barrier for the future against Indian excursions, by pushing forward, and fostering a strong settlement on the little river Platte, to the west, and on the Des Moines, to the north."

The most significant feature of the Legislature's memorial of 1818 is the large boundary requested. Compared with the popular petitions of the previous year the limits of the proposed State had been extended on the north, west, and south. To ascertain the reasons for this enlarged boundary in the 1818 petition, other than those reasons set forth in the memorial itself, is an interesting problem from an antiquarian point of view and an important one from its bearing on the history of several states. We believe this request was the result of two forces: (1) the general desire of the Legislature and the people of Missouri Territory, excluding the Arkansas country, for a large State; and (2) the special influence exerted by those individuals and sections in Missouri Territory that had important interests at stake in such an extended boundary line.

The large northern boundary asked for, which would have included a portion of the southern part of the present State of Iowa, was very probably sought by the Legislature owing to a general desire for a large State, and not because there was any special demand on the part of any county or district in Missouri for this country. In fact, it is very doubtful if the memorialists realized either the vast extent or the richness of the soil of this northern country. The Legislature may also have been impelled to sanction this northern boundary in order thereby to have a State that was equally divided by the Missouri River. At least it is quite probable that the representatives from Howard and St. Charles county, as well as the inhabitants of the potential counties of Pike, Montgomery, and Lincoln which were erected into counties in December 1818, would favor this.

The request for the country on the west, especially that part along the Missouri, Kansas, and Little Platte rivers, was

not such a haphazard demand, but rested on a sincere wish for, and a knowledge of, the section desired. It was undoubtedly well known that this land was very fertile and would soon be settled by the pioneers who were ever pushing westward. The Indians then occupied it; and what more propitious time than this for expelling them could have been found? The demand for this country must have come largely from the Boone's Lick country, which had already been formed into one county and was soon to be broken up into many. The great movement of immigration was along the Missouri River, and those who settled there saw clearly that population would continue to advance on and up that highway and its tributaries. In 1819 this demand of central Missouri, which will be considered below, is openly set forth in the *Missouri Intelligencer*. We can assign no reason for the Legislature's placing the western boundary so far west between the Kansas River and thirty-six degrees and thirty minutes north latitude, unless it was a desire for a straight line or a larger state; perhaps the members of that body reasoned that by making the line continuous they would obviate making so many explanations to Congress. The Legislature also probably foresaw that Missouri's Delegate in Congress would have to employ all his ability to gain the proposed boundary on the south, and did not wish to further embarrass him.

The boundary on the south, as set forth in the legislative petition of 1818, began in the middle of the Mississippi River at the thirty-sixth degree of north latitude, thence in a straight southwestward line to the mouth of the Big Black River, then followed the White River to where the parallel of thirty-six degrees and thirty minutes north latitude crossed it, and then continued along that latitude to the west until intersected by the western boundary. No reason was stated in the memorial for requesting this irregular southern boundary, and today it still remains a more or less unsolved problem. The question is in itself an interesting one and of much historical value apart from the fact that it was partly due to this demand of the Legislature and the influence of certain individuals that the lower part of New Madrid, most of Dunklin, and all of Pemiscot counties, are today within the limits of Missouri. For a com-

prehension of this subject it is essential that a general survey of the boundaries and population of the southern counties of Missouri Territory be made.

When Governor Howard, on October 1, 1812, issued his proclamation calling for an election of territorial representatives, he also, in pursuance of the Act of Congress of June 4, 1812, divided and set the boundaries of the former five districts, which he designated "counties." The county of New Madrid was composed of the country south of Cape Girardeau county, and extended to the very limits of the State of Louisiana.[20] On December 31, 1813, the Missouri Territorial Legislature created Arkansas county out of New Madrid. The line of division between the two began in the Mississippi River at island number nineteen, which is located nearly on the thirty-sixth degree of north latitude; thence it ran straight to the mouth of "Red River" (Little Red, which empties into the White River some miles below the mouth of Black River), and then up that stream to the Osage boundary line or an extension thereof.[21] On January 15, 1819, New Madrid county was further diminished in size by the erection of Lawrence county, which embraced practically that part of the former county which lay west of the St. Francois River.[22] As indicative of the increase in population, it might be noted that the southwestern part of Arkansas county was divided in December 15, 1818, into three counties,[23] and that the United States census for Arkansas Territory in 1820 gives seven counties with a total population of 14,273.[24]

[20] Scharf, *op. cit.*, I. 557, M. 1.

It might be noticed that prior to 1806, New Madrid district included the whole Arkansas country. On June 27, 1806, the territorial legislature of (upper) Louisiana cut off the southwestern part of the New Madrid district of Arkansas for judicial purposes. *Cf. Mo. Ter. Laws*, I. 68f. This act was, however, repealed on July 7, 1807, and the Arkansas country fell back under the jurisdiction of the New Madrid district. *Cf. Ibid.*, pp. 178ff.

[21] *Ibid.*, pp. 293ff. Arkansas county embraced all the country in Missouri Territory south of that line.

[22] *Ibid.*, pp. 354ff. Lawrence county was also given an extension to the Arkansas river cut off from Arkansas county.

[23] *Ibid.*, pp. 589ff.

[24] *U. S. Census*, 1900, *Pop.*, I. pp. 10f. In 1810 the population of Arkansas was 1,062; in 1820, 14,273, distributed as follows among seven counties: Arkansas (along the Mississippi River), 1260; Clark (central), 1,040; Hempstead (southwest), 2,248; Lawrence (north), 5,602; Miller (extreme southwest), 999; Phillips (east, along Mississippi river), 1,201; and Pulaski (central), 1,923.

There are several facts worth noting in this connection: 1st, New Madrid county, after the erection of Arkansas county in 1813, contained from 1813 to 1815 practically all of Lawrence county; 2d, Lawrence county was probably a fairly populous county in 1818, and in 1820 contained over one-third of the total population of the Territory of Arkansas;[25] 3d, Arkansas county must have had a large population in 1818 or three new counties would not have been formed from it in that year, and two more between 1818 and 1820. With this summary of the historical and statistical data relating to the districts interested in the proposed southern boundary of Missouri as set forth in the 1818 memorial, the reason for the Territorial Legislature requesting such a boundary will now be taken up.

It has been maintained by some writers on Missouri history that those members of the Missouri Territorial Legislature of 1818 who represented the counties of New Madrid, Lawrence, and Arkansas, were the leaders in advocating this proposed southern boundary.[26] We do not believe this position is well taken in regard to the two last named counties, and we are even more convinced that the constituents of the representatives from Lawrence and Arkansas counties did not favor inclusion in the proposed State of Missouri. Some evidence, however, supports the former position; some opposes it.

The foregoing historical sketch of New Madrid, Arkansas, and Lawrence counties shows the political relation between these districts, and hence between the Arkansas country and the Missouri country. There was also present to a certain extent the relationship of blood and of business interest; it should also be remembered that both New Madrid and Lawrence counties extended on both sides of parallel thirty-six degrees and thirty minutes. It is important to note that one of the trade outlets of the upper part of Lawrence county to the north and east was through Cape Girardeau and New Madrid counties. Furthermore, it would not seem strange

[25] The territorial census of Missouri Territory taken in 1817 gave the following white male population to these counties: New Madrid, 669; Lawrence, 1,529; and Arkansas, 827. (Billon, *op. cit.*, 1804-21, p. 51.

[26] *Cf.* Houck, *op. cit.*, I. pp. 4f.

that at least some of the inhabitants of New Madrid and Lawrence counties should oppose having their counties divided and placed under two territorial or state governments. The most plausible evidence yet produced that the New Madrid county inhabitants and those of the northeastern part of Lawrence desired to be included in the new state, is the fact that during the summer of 1819 these counties, together with Ste. Genevieve, Madison, Washington, Jefferson, Cape Girardeau, and Wayne (the last named, a part of Lawrence and Cape Girardeau prior to December, 1818) petitioned Congress for their incorporation within the proposed State of Missouri and for the Missouri River as the northern boundary of that State,[27] even though the national legislature had already passed an act, which went into force July 4, 1819, erecting the Territory of Arkansas and setting forth its boundaries. The northern boundary of Arkansas Territory, as set forth in that act, excluded that part of New Madrid county north of the thirty-sixth parallel, and included that part of Lawrence county south of thirty-six degrees and thirty minutes. This petition or petitions of 1819 should not be taken as proof conclusive of the sentiment of the people in these counties, as it is known that such eminent men as John Scott, David Barton, Ch. S. Hempstead, and John D. Cook declared that the people of Ste. Genevieve and Jefferson counties opposed it; John Rice Jones of Washington county said his people did not favor it; and a counter-petition to Congress of the inhabitants of Cape Girardeau county actually appeared.[28]

These arguments have in them something plausible; but a close examination shows them unsound. In the first place, political relationship between counties or between territories

[27] *Jackson* (Missouri) *Herald*, Sept. 11, 1819.

[28] *Ibid.*, Aug. 23 to Sept. 18, 1819.

It should be noticed that the northern boundary of Arkansas Territory, as set forth in the act of 1819, is practically the same as the present boundary, and included but a very little part of New Madrid county. The small part of New Madrid county that was included in Arkansas Territory by this act was a small triangular tract whose sides were: the St. Francois River on the west, the thirty-sixth parallel on the north, and on the south to the intersection on the St. Francois River of a line drawn from a point in the Mississippi River, at about thirty-six degrees to the mouth of the Little Red River where it empties into the White River. This small tract could not have had a large population at that time, as all the rest of New Madrid county north of thirty-six degrees was still left in Missouri Territory.

is no proof of their desire for union. For example, there had been a close political bond between Indiana Territory and the Illinois country. Still, when population had increased the latter district wanted a separate territorial government of its own and pledged its delegates to this end, and this in the face of a strong opposition throughout the eastern Indiana country. In the second place, the ties of blood and interest which connected Lawrence and Arkansas counties with New Madrid and Cape Girardeau counties were no stronger than those uniting Lawrence county with Arkansas county, and it has never been maintained that the last named county desired incorporation in the proposed State of Missouri. In fact, the natural trade outlets for nearly all of Lawrence county lay to the south. The main highways of commerce were then the rivers, and especially was this true where the direction of the bulky trade was down-stream. New Orleans was the port of export for the surplus products both agricultural and mineral of the Mississippi Valley. The surplus products of Lawrence county could reach that city entirely by water, and be propelled by current the entire distance. The St. Francois, the Big Black, the White, the Little Red, the Arkansas, and the Mississippi rivers together with their branches made a network of water channels in this district. Their superiority over the land routes, which then passed through swamps and forests and over hills, is obvious. In 1818 Lawrence county faced south and it remained so till the arrival of the railroads. In the third place, while New Madrid and Lawrence counties extended on both sides of the thirty-six-thirty line and perhaps did not desire to be cut into two parts, this is not sufficient reason to justify our stating that each county therefore had the same predilection as to its incorporation in either Missouri or Arkansas. We are quite convinced that the exact opposite of this is true. We believe that New Madrid county desired inclusion in Missouri; that Lawrence county desired inclusion in Arkansas. To us the most plausible proof, that has yet been brought to light, showing the desire of Lawrence county and, therefore, of her representatives for incorporation in the proposed State of Missouri, is the abortive Missouri-river-boundary petitions of 1819. These petitions will be taken

up again when we consider the memorials of that year, and we hope that the importance of the subject will plead our pardon for any repetitions that are made.

Fortunately, not only do we know the general provisions of these Missouri-river-boundary petitions and the exact boundaries set forth in them, but, what is still more important, we also have the most irrefutable evidence relating to their value and their influence both at home and abroad. These petitions, purporting to represent the wishes of the people of seven southern Missouri counties and of the county of Lawrence in Arkansas Territory, requested Congress to give the proposed State of Missouri the following boundaries: on the north, the Missouri River from its mouth to the mouth of the Kansas River and thence in a straight line west to the border of the United States; on the west, that part of the western boundary of the United States lying between the point of intersection on it of the proposed northern boundary of Missouri and the thirty-sixth parallel; on the south, east along the thirty-sixth parallel to its intersection with White River, thence down that river to the mouth of Big Black River, then east to the Mississippi River; and on the east, thence up the Mississippi River to the mouth of the Missouri River. The plan proposed was chimerical. It obtained the sanction of few if any leading politicians even in southern Missouri. It received the support of no Missouri newspaper and its provisions were preserved for posterity by its opponents. It was the most selfish, unpatriotic, and ill-timed movement in the early history of this State, and was then so regarded by Missourians. No class supported it except perhaps a few small politicians, who wanted an issue to embarrass their opponents and to advantage themselves by arousing sectional rivalry, and some large landowners, who through misdirected patriotism and hope of gain were willing to sacrifice the northern Missouri settlements and thwart the wishes of the northern Arkansas people. As annalists, we regret the obscurity surrounding the promoters of this plan; as Missourians, we find consolation in this fact. Of the thousands of white male inhabitants in the counties from which these petitions issued, only five or six hundred signed them. It was this small

number of signatures attached, so said Scott—Missouri's delegate to Congress—that prevented the proposition from causing great difficulty in Washington.[29] In short, the leaders of the entire movement kept themselves well hidden. It was unpopular from its inception, and even Cape Girardeau county, which would seem to have benefited most by such a plan, strenuously opposed it. There existed at this time a considerable amount of jealousy between the north Missouri country and the southeastern counties of this territory. This was, we believe, one of the mainsprings behind these petitions of 1819. It is to the enduring credit of the southeastern Missouri counties that their people and their leaders refused to be inveigled in such a scheme. The plan itself was absurd, considering it wholly from the southern boundary proposed. The establishment of Arkansas Territory several months prior to the appearance of these petitions, had settled the boundary line between that territory and Missouri. Practically all New Madrid county had been left in Missouri Territory; what little remained in Arkansas is not worth considering here. Lawrence county had, it is true, been bisected by parallel thirty-six degrees and thirty minutes, but this was a half degree farther south than the Arkansas petition of 1818 had requested as the northern boundary of Arkansas Territory. We are even forced to conclude that these petitions of 1819 were as absurd as they were ill-timed, as selfish as they were abortive, and as unpopular as they were unpatriotic.

On the other hand, there is conclusive evidence that Arkansas county did not favor such a dividing line as was proposed in the Legislature's memorial of 1818. Lying so far south that county certainly did not expect to be a part of Missouri. Besides, in the fall and winter of 1818-1819, there were in circulation several Arkansas petitions praying for a separate territorial government. One of these petitions, dated December (?) 1818, "by sundry inhabitants of Southern Missouri praying for a separate government as the Territory of Arkansas" is still in

[29] *St. Louis Enquirer*, Aug. 2, 1820; *Mo. Intelligencer*, Aug. 12, 1820.

existence.[30] The boundary requested in it on the north is as follows: "a line to be run due West from the Missippi [*sic*] river in the thirty-sixth parallel of north lat. to the river St. Francis—thence up the middle of the main channel of the said river St. Francis to the thirty-seventh parallel of north Lat. and thence due West to the Western boundary of United States Territory West of the Mississippi."[31] Why, then, should the Arkansas county and the Lawrence county members of the Missouri Territorial Legislature of 1818 favor an extended southern boundary for Missouri, thereby cutting down the area, and, what is still more important, reducing the population of Arkansas territory? And, furthermore, why would they desire to thwart the wishes of their constituents and vote contrary to the popular petitions of the Arkansas people in this respect? For purposes of territorial government, the population of the Arkansas country was at its greatest extent none too large, and the two counties of Lawrence and Arkansas contained what little population there was. It is hardly reasonable to think that the inhabitants of this district should desire the inclusion in Missouri of so many of their people, and still petition Congress for territorial government under which at no distant date, they would wield far greater influence in proportion to their numbers than under the towering State of Missouri. Instead of the delegates from Lawrence and Arkansas counties having favored this, it is almost certain that they opposed giving Missouri any of the Arkansas country south of thirty-six degrees and thirty minutes, and perhaps even south of thirty-seven degrees, except the narrow strip between the Mississippi and St. Francois rivers to parallel thirty-six degrees. An article in the *Missouri Intelligencer*, dated December 31, 1819, serves

[30] Found in House Files. Referred Jan. 21, 1819. Listed in Parker, *op. cit.*, No. 272. The northern boundary clause was copied for us by Dr. N. D. Mereniss.

[31] At the same time another petition relating to the seat of government of the proposed Territory of Arkansas was presented to Congress by the inhabitants of Arkansas county. *Ibid.*, No. 271. Copy in *The State Hist. Soc. of Mo.*

to clear up much of this mistaken conception.[32] The following is taken from the article and explains itself:

"It is a well known fact that if Arkansas could have had, at the last session, the number of representatives her population entitled her to have, that Congress would have been petitioned to divide the two territories by a line running west from the mouth of the Ohio. A large minority of the House of Representatives were in favor of such a division, and hoped that some member of Congress would at least enquire why the southern limit should be so crooked. The pretended reason given for it at St. Louis was so frivolous that it would have influenced nobody in Congress.[33] A part of the county of New Madrid, about fifteen miles from east to west, and about thirty miles from north to south, lying between the river St. Francois and the Mississippi was cut off from the center of the county, now territory of Arkansas by an impassable marsh, over which, by the way many travellers have passed, and therefore the line must begin at thirty-six degree of latitute on the Mississippi, and run west to the St. Francois, thence up the St. Francois to 36 30 N. latitude."

It is certain that the Arkansas country, including the entire counties of Lawrence and Arkansas but excluding New Madrid county, had far fewer representatives in the lower house of the territorial legislature than her population entitled her to have.[34] That the omission of the population of Arkansas county

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[32] The article is on "Missouri State Limits" and is found in the editorial column thus showing its importance. It is an ably written piece, and is signed by "A Citizen." As the date indicates, this was written while the Missouri Question still hung in the balance, but after Arkansas had become a territory of the lowest grade by act of Congress of March 2, 1819, which went into effect July 4, 1819. (*Stat. at Large*, III. 493). The northern boundary of Arkansas as set forth in that act was as follows: Starting on the Mississippi River on the thirty-sixth parallel, thence along this parallel to the St. Francois River, up that River to thirty-six degrees and thirty minutes, and thence west along that parallel, i. e., the same as the present southern boundary of Missouri.

[33] The following is the reason given at St. Louis.

[34] The total population of Arkansas Territory in 1820 was 14,273 and that of Wayne county, Missouri, part of which had been taken from Lawrence county—, 1,443. Of the former 7,290 were free white males; of the latter 779 were free white males. The white male population of Arkansas and Lawrence counties in 1817, on which was based the apportionment of representatives to the territorial legislature of 1818, was 2,356—giving these two counties only four representatives. (Billon, *op. cit.*, 1804-1820, p. 51). It also seems very strange that in the copy of the census of Missouri Territory taken in 1817, which was transmitted to Congress by Missouri's Delegate, John Scott, there is given no census for Arkansas county and is marked simply "no return" and "1" representative. One is forced to the conclusion that the territorial census of 1817, as given in the documents accompanying the Missouri Legislature's memorial of 1818, was too low for Lawrence county and was deliberately omitted as regards Arkansas county, hence the small representation of those counties in the territorial legislature of 1818. These two counties should have had at least seven or eight representatives in the Missouri Territorial Legislature of 1818, and it is quite probable that their white male population warranted their having nine or ten representatives. (*U. S. Census* 1830, *Schedule* 1790-1820, pp. 23, 25; *Cf.* also *supra n.* 30.)

from the state census of 1817 was deliberate; and, that the census of the population of Lawrence county was too low, also appears from the number of petitions from the Arkansas country that were presented to Congress in 1818-19.[35] We shall now conclude this somewhat extended discussion by stating our conclusions. We believe that the inhabitants and representatives of that part of Lawrence county lying south of thirty-six degrees and thirty minutes, perhaps south of even parallel

[35] On December 16, 1818, Mr. Robertson of Kentucky offered for consideration the following resolution: Resolved, That a committee be appointed to inquire into the expediency of establishing a separate territorial government in that part of the new Territory of Missouri, lying south of thirty-six degrees and thirty minutes north latitude, which is called the Arkansas country, and which is not included in the proposed boundaries of the projected State of Missouri, by the bill now before the house, for the purpose of establishing a State government in part of the Territory of Missouri, and that the said committee have leave to report by bill or otherwise." This resolution was adopted. Mr. Robertson, in support of the resolution, said that the Arkansas country was a large territory and should have a separate territorial government even if Missouri was not admitted then.

Mr. Scott of Missouri supported the resolution, but rather hedged in his speech. He said he was waiting a memorial for statehood from the Missouri Territorial Legislature and a copy of the census, etc. He also remarked that he had intended introducing a similar resolution as soon as the Legislature's memorial had arrived. He explained that he had not done this beforehand because he did not have full data, etc. However, he thought the population justified a separate territorial government. (*Abridg. Debates of Congress*, VI. 222. *Annals of Congress*, I. 413f.)

It seems rather strange that the Arkansas question was first brought forward in Congress by a representative from Kentucky, and not by Missouri's Territorial Delegate. There was perhaps a lack of confidence in Scott on the part of the Arkansas people, and they probably doubted if he would urge thirty-six degrees and thirty minutes as the dividing line, knowing already that the Missouri Territorial Legislature was asking or had asked for, territory below that parallel for the future State of Missouri.

On December 21, 1818, House Bill No. 238 was reported "establishing a separate territorial government in the southern part of Missouri." This passed the House February 20, 1819 and was read in the Senate February 22, 1819. (Parker, *op. cit.*, p. 27. Found in House Library and House Files, Fifteenth Congress.) This bill finally passed and became a law March 2, 1819, going into effect July 4, 1819. It set the northern boundary of Arkansas Territory the same as it is today, *i. e.*, it excluded the New Madrid strip and followed parallel thirty-six degrees and thirty minutes. If there had been a very pressing demand on the part of the inhabitants of Lawrence county along the Black River and the left bank of the White River for inclusion in Missouri State, it is hard to see why these people together with Scott could not have obtained it as easily as the New Madrid people did. (*Annals of Congress*, III. 252f., 272ff; IV. 1222-1235, 1273f., 1283.)

On January 30, 1819, Scott presented a petition of sundry inhabitants of the Arkansas country, praying that a separate territorial government be established for them. This is the last petition of its kind of which there is any record and the only one presented by Scott. (*Ibid.*, I. 911.)

thirty-seven, and that the people and representatives of Arkansas county, did not favor inclusion in the new State of Missouri. It seems certain, on the other hand, that the people of the New Madrid strip south of thirty-six degrees and thirty minutes did have a sincere desire to be attached to this State.[36] The inclusion in the legislature's petition of 1818 of that part of Lawrence county that lay south of parallel thirty-six degrees and thirty minutes was, we believe, the work of several influential landowners and politicians of southeastern Missouri, aided, perhaps, by a few similarly interested men in Lawrence county.[37] This concludes our discussion of the legislature's memorial of 1818.

On December 18, 1818, the Speaker of the House of Representatives of the United States presented to that body the Missouri legislative memorial.[38] On February 13, 1819, the Missouri bill was taken up in the Committee of the Whole and was discussed. It was on this day that Talmadge proposed an amendment, limiting slavery in Missouri State by declaring free all negroes born in that territory after its admission, and by providing for the gradual emancipation of those who were then slaves. The *Annals* correctly state that: "This motion gave rise to an interesting and pretty wide debate." [39] Two days later, Talmadge proposed his famous amendment to the Missouri bill by prohibiting the further introduction of slavery

[36] Houck, *op. cit.*, I. 6f., says that "to J. Hardeman Walker," a large landowner near the old village of Little Prairie (close to the present town of Caruthersville), "we owe it that the additional territory now embraced in the limits of Pemiscot county, and most of that within the counties of Dunklin and New Madrid, was added to the new State." Walker was an "energetic, public spirited" citizen of Missouri in 1818; his plantation lay south of thirty-six degrees and thirty minutes. He made a vigorous effort both at home and perhaps outside the State to have the New Madrid strip included in the State. It is very probable that Scott and the politicians at Jackson, Missouri, such as Alexander Buckner, General James Evans, Judge Richard S. Thomas and others there were also quite influential. Jackson, Missouri, was then "the great business and political center of the territory south of St. Louis," and would naturally lend its greatest support to this plan.

[37] Mr. Houck, in a letter to the author, dated January 29, 1914, states that the inhabitants of that part of Lawrence county south of parallel thirty-six degrees and thirty minutes to the mouth of the Black river, and east of the White river, probably lacked a leader in pushing forward their desire for inclusion in Missouri, and hence were unsuccessful.

[38] *Annals of Congress*, III. 408.

[39] *Ibid.*, p. 1166.

in Missouri and by providing that all children born in Missouri after her admission were to be free at the age of twenty-five years. A long debate followed which covers twenty-three pages of the *Proceedings*. The amendment passed in the Committee of the Whole by a vote of seventy-nine to sixty-seven.[40] On the 17th of February the House passed the Missouri bill with the Talmadge amendment,[41] and the Senate was informed to that effect. The House bill was immediately considered by the latter body, and after a second reading was referred to the committee in charge of the memorial of the territorial legislature of Alabama.[42] This committee, on the twenty-second, reported the Missouri bill with an amendment. The amendment recommended was to strike out the Talmadge amendment of the House.[43] On the twenty-seventh, after a long and animated debate, the Senate by a strong majority followed the recommendation of its committee in this respect,[44] and on March 2d, the Missouri bill, with the Senate amendment,

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[40] *Ibid.*, pp. 1170-1193. Prof. Woodburn, in his article on *The Historical Significance of the Missouri Compromise*" (*Annual Report of the American Historical Association*, 1893, pp. 253ff.), says that neither of these propositions of the Talmadge Amendment "proposed to interfere with the rights of property in the Territory," but that these restrictions of slavery appeared to the inhabitants of Missouri and Arkansas not as restrictions but as abolition, in view of the third article of the treaty of cession. If Professor Woodburn had lived in Missouri at that time, and had been an owner of slaves, he would very probably have appreciated and accepted the Missouri interpretation of this amendment. Whether the Talmadge amendment proposed the abolition or the restriction of slavery is of little consequence, but it is important to know that its application and enforcement in Missouri would have meant the death of that institution in the proposed state. It may be of interest to note that the *Annals* speak of the Talmadge amendment as prohibiting slavery in the new State. *Cf. Annals of Congress*, III. 251.

[41] *Ibid.*, pp. 1194-1216. On the sixteenth the House took up the consideration of the Missouri question and the Talmadge amendment, and a debate followed which covers twenty pages of the Annals. The first part of the amendment prohibiting the further introduction of slavery in Missouri was passed by a vote of eighty-seven to seventy-six. The slave children part of the amendment passed by the narrow vote of eighty-two to seventy-eight. The vote for ordering the amended bill engrossed for a third reading was ninety-seven to fifty-six.

For passage of the bill see *Ibid.*, IV. 1218.

[42] *Ibid.*, III. 238.

[43] *Ibid.*, p. 251.

[44] *Ibid.*, pp. 272f. A motion was made to postpone the consideration of the bill to a day beyond the session. This was negatived by a vote of fourteen to twenty-three. That part of the slavery restriction regarding negro children was stricken out by a vote of thirty-one to seven, and the other part by a vote of twenty-two to sixteen.

was passed by the upper body.[45] The House, by a narrow vote, refused to concur with the Senate in its amendment,[46] and the Senate adhering to its position to strike out the slavery restriction clause,[47] the House agreed to adhere to its position,[48] and the Missouri bill was lost for that Congress. One thing regarding Missouri had been settled, and that was her southern boundary, as the act of Congress providing for a territorial government in Arkansas had set the northern boundary of that district. The boundary of the proposed new State of Missouri on the north and west was still left to absorb the attention of the inhabitants of Missouri Territory, and curiously enough, in spite of the Arkansas act, they also brought forward the question of the southern boundary.

It was during the summer and fall of 1819 that petitions and resolutions relating solely to this boundary question first made their appearance in Missouri. It was a matter of the greatest importance at that time, and the newspapers both north and south of the Missouri river show clearly the concern of all over it. On Monday, July 5, 1819, at a large gathering of citizens at Franklin, Howard county, Missouri, a resolution was adopted "That, in the opinion of this meeting, the Missouri river ought to divide equally the State of Missouri; and that the western boundary ought to extend at least fifty miles beyond the mouth of the Kansas river, without prejudice from the remote angular point made by New Madrid County."[49] This resolution was only another way of expressing the wishes of the inhabitants of at least the western part of Missouri Territory for the land along the Missouri, the Kansas, and the Little Platte rivers. The first expression of this wish is found in the Legislature's memorial of 1818, and in all probability its strongest advocates were the representatives from the Boone's Lick country, although it must also have had the support of a majority of the Missouri people. The *Missouri Intelligencer* of 1819-

[45] *Ibid.*, pp. 275, 279.
[46] *Ibid.*, IV. 1433ff.
[47] *Ibid.*, III. 282.
[48] *Ibid.*, IV. pp. 1436ff.
[49] *Missouri Intelligencer*, July 9, 1819; this resolution was also noticed in the *Jackson* (Missouri) *Herald* of September 4, 1819.

1820 had several valuable articles on this subject. One of special worth appeared on December 31, 1819. In it a request was made that Congress allow the western boundary to take in the "headwaters of the Little Platte" "to the mouth of Wolfe river." A remarkable prophecy was made by the writer when he said: "It is impossible for our government to keep our frontier settlers from crossing the western Indian line to the fertile lands of the Little Platte. These lands must be purchased in a short time, and if annexed to our State would save Congress the expense of a territorial government for a long time—perhaps for one hundred years." This was what actually took place, and in 1836 the Platte Purchase gave to Missouri what her inhabitants in 1819 saw so clearly must finally be either a part of this state or a territory.[50] Similar articles appear during January, 1820, on this point. In February, 1820, when the first draft of the Missouri Bill was printed in the *Missouri Intelligencer*, the boundaries were the same as were set forth in the Enabling Act. However, it was reported that: "It is the intention of Mr. Scott to introduce several amendments, so as to make it correspond with the Legislative memorial as far as possible." [51] Missouri failed to obtain the Little Platte country at this time, but her inhabitants won it for her during the next sixteen years, and legal title was vested by Act of Congress in 1836.

During this summer, probably in July or August, 1819, the first and only Missouri-river-boundary petitions appeared. They had their origin in southern Missouri and in northeastern Arkansas and purported to be petitions of the inhabitants of the counties of Ste. Genevieve, Madison, Washington, Jefferson, Wayne, Cape Girardeau, Lawrence, and New Madrid. However, prominent men of Ste. Genevieve, Jefferson, Washington and Cape Girardeau counties protested in letters to the *Jackson* (Missouri) *Herald* that the inhabitants of these four counties

[50] *Ibid.*, Dec. 31, 1819. The article is signed, "Citizen." The writer did not think that the wishes of Howard and Cooper counties in this respect would be well attended to by Scott. See also, *Missouri Intelligencer*, Jan. 7, 1820, an article by "Cato;" Jan. 28, 1820, an editorial against a Missouri-river-boundary line.

[51] *Ibid.*, Feb. 4, 1820.

did not favor these petitions; and a counter-petition to Congress actually appeared in Cape Girardeau county opposing the division of the Territory of Missouri.[52]

It has been quite plausibly maintained by some, that these Missouri-River-boundary petitions made their appearance in 1818; that they originated in the dissatisfaction of many residents who did not favor the boundaries set forth in the popular petitions of 1817; and that they serve to explain the ragged southern boundary clause requested for Missouri in the memorial of the Missouri Territorial Legislature of 1818.[53] We cannot understand how such propositions could have obtained credence. It is obvious that the primary subject of consideration here is the question of dates. If the formerly accepted chronology is wrong, the whole argument is of no value. If the Missouri-River-boundary petitions did not appear until 1819, they could not have exercised an influence on the 1818 petition. We take pleasure in handling this matter; in correcting so important an error. The fact is, as far as we can gather from the records preserved of that day, no Missouri-River-boundary petition appeared until July or August of 1819.[54] No newspaper in Missouri Territory mentions such a petition until 1819; nor is there any item on this subject in *Niles' Register* prior to 1819. We regard this silence of these publications in 1818 as conclusive evidence that no Missouri-River-boundary petition appeared in that year. It is certain that such a boundary line would have attracted attention in 1818, as is evidenced in the

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[52] *Annals of Congress*, Sixteenth Congress, first session, I. 800. For these Missouri-river-boundary petitions, the counter-petition, letters of John Scott, John D. Cook, John Rice Jones, D. Barton and Ch. S. Hempstead, see *Jackson* (Missouri) *Herald*, Aug.—Sept., 1819.

[53] *Cf.*, e. g., Houck, *op. cit.*, I. 3f.

[54] The statements in Houck, *op. cit.*, I. 3f., regarding these petitions are inaccurate. This is due to a confusion of dates. For example, in giving authority for the statement that these Missouri-River-boundary petitions appeared in the early part of 1818 or at the close of 1817, reference is made to Niles' Register [*Sic.*, 17 Niles' Register, p. 175]. When we consulted this reference it was found under date of November 13, 1819. Again, it is stated in the work under discussion, that the *St. Louis Enquirer* objected to the Missouri-River-boundary petition of 1818. On investigating we found that this objection did not appear in that paper until December 1, 1819, and that it was then directed against the 1819 petitions. *Cf.* Billon, *op. cit.*, 1804-1821, p. 105; Scharf, *op. cit.*, I. 905; and also Houck, *op. cit.*, III. 65f.

Washington, D. C., the Jackson, the St Louis, and the Franklin, Missouri, newspapers of 1819, when such a proposal was actually made in the petitions of that year.[55] Furthermore, the *Annals of Congress* made no mention of such a petition being presented to Congress during 1818; while they did record the petitions of 1819.[56]

The Missouri-River-boundary petitions stated that the Missouri River should form the boundary between two states and not be the dividing line of a state. The boundaries asked for Missouri were: The Missouri river from its mouth to the mouth of the Kansas river, thence west to the western boundary of the country, thence south along the far western boundary to the thirty-sixth parallel, thence east to the White River, and down that river to the mouth of the "Big Black river," thence east to the Mississippi River, thence up the latter river to the mouth of the Missouri River. There were several of these petitions in circulation, as the *Annals* state that on December 18, 1819, the Speaker of the House presented "petitions," which, judging from the order of arrangement of the names of the counties from which they came,[57] were undoubtedly the same as the above.

The question naturally arises whether these petitions received any considerable support in either Missouri or Arkansas Territory. As this has already been discussed we will make only a few additional remarks. These petitions did not have the support of many followers either in Arkansas Territory or in Missouri. If prominent and influential men in the last Territorial Legislature did in 1818 favor the inclusion of northeastern Arkansas, they probably saw in 1819 that further effort in this line was futile. Missouri had been given her southern boundary when Arkansas Territory was organized July 4, 1819.

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[55] *Cf. Niles' Register*, XVII. 175 (Nov. 13, 1819); *St. Louis Enquirer*, Dec. 1, 1819; *Missouri Intelligencer*, Dec. 17, 1819; *Jackson* (Missouri) *Herald*, Aug.—Sept., 1819.

[56] I. 800, (Dec. 28, 1819.) The petitions presented to Congress on March 16, 1818, cannot by the widest interpretation be construed to have been Missouri-River-boundary petitions. (*Cf. Annals of Congress*, II. 1391f.) Most of them were probably the popular petitions of 1817, and some were probably petitions from the Arkansas country praying for a separate territorial government.

[57] *Ibid.*, I. 800.

The New Madrid strip had been left to Missouri; Arkansas had been given no more than justly belonged to her. The boundaries proposed in the petitions were too fanciful ever to have succeeded even under more favorable surroundings. From all that we can learn, the plan was put on foot and carried out with the greatest secrecy. The opposition to it in the only newspaper published in south Missouri was bitter and unreserved. It was probably as decisively opposed in Arkansas Territory. At all events it did not obtain a hearty welcome anywhere and instead of being endorsed by a thousand males in Lawrence county alone, it received a total of but five or six hundred signatures in the eight counties of Ste. Genevieve, Madison, Washington, Jefferson, Wayne, Cape Girardeau, Lawrence, and New Madrid.

Scott, in a letter dated August, 1820, to the people of Missouri announcing his candidacy for representative to Congress, states that these Missouri-River-boundary petitions caused him trouble in Congress but that they were put aside owing to "The comparatively small number of the whole mass of the people who signed those petitions, being only between five and six hundred signers, the obvious bad policy of the measure, and the dangers of delay, which our friends evidently saw must result from such a division" etc., etc.[58] The articles and editorials in the Missouri newspapers of that day sustain Scott in this respect. None of these publications favored these petitions, and all were quite pronounced in their opposition to them. *The St. Louis Enquirer* of December 1, 1819, was outspoken against the petitions; and said that, after a few miles of woodland on the principal rivers, there appear the "naked and arid plains."[59] This paper adds that: "The petition, as might be readily supposed, meets, among the people of the territory with a very few friends."[60] *The National Intelligencer* of Washington, D. C., did not think it would be successful, although it rather approved the proposition of a series of long, narrow states west of

[58] *St. Louis Enquirer*, Aug. 2, 1820; *Missouri Intelligencer*, Aug. 12, 1820.
[59] *Missouri Intelligencer*, Dec. 17, 1819. An article by "An Observer."
[60] *Ibid.*, Dec. 17, 1819. Taken from the *National Intelligencer*.

the Mississippi River, similar to Tennessee.[61] The *Missouri Intelligencer* vigorously opposed the petition and suggested that the southern boundary of Missouri be a line running west from the mouth of the Ohio river, and that the State be so enlarged as to make the Missouri River the actual center of it.[62] The *Jackson Herald* was as bitter as the *Missouri Intelligencer* in its attack on these petitions. Although this subject has a special attraction to us, it will now be necessary to consider the fight in Congress over the Missouri question during the first session of the sixteenth Congress, which finally resulted in the passage of an Enabling Act.

On December 8, 1819, Scott introduced in the House the memorial of the Territorial Legislature and those of the inhabitants of Missouri, praying for statehood, which had been presented to the House at the last session of Congress.[63] These were referred to a committee of five, of which Scott was chairman. A Missouri bill was reported from this committee the following day, and from that time to the end of December, it was under discussion.[64] It is important to notice that on December 30th, when the Maine statehood bill was taken up, Clay, in a speech, sought to connect the Missouri proposition with it. The Maine bill passed the House on January 3, 1820, and was sent to the Senate.[65]

The Senate had already received the Missouri Legislature's memorial,[66] and the Judiciary Committee to whom it had referred the Maine bill reported that bill with an amendment, which was the Missouri bill without restrictions. On January 13, 1820, the Senate took up this Maine-Missouri bill as reported, and an effort was made to separate the two. This attempt at a separation of the two bills was lost by a vote of twenty-five to eighteen.[67] On the seventeenth an amendment

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[61] *Ibid.*, Dec. 17, 1819. This paper, *i. e.*, *the National Intelligencer*, said that it was unfair to give three states a frontage on the Mississippi river, and all the States west of these to have no frontage, besides being both "feeble and remote, with a foreign nation on their confines."

[62] *Ibid.*, Dec. 31, 1819.

[63] *Annals of Congress*, I. 704.

[64] *Ibid.*, pp. 711, 732, 734ff., 801ff.

[65] *Ibid.*, pp. 831-44, 848f.

[66] *Ibid.*, pp. 42f., 73f.

[67] *Ibid.*, pp. 85-99, 101-118.

was offered by Edwards to exclude slavery from the other territory of the United States, but this amendment was withdrawn.[68] On the same day Roberts offered an amendment to the Missouri amendment to the Maine bill, excluding the further introduction of slavery into Missouri.[69] An animated debate took place in the Senate following this. The next day, Thomas introduced a bill, which later became the basis of the First Missouri Compromise, which prohibited slavery in all the territory of the United States north and west of the proposed State of Missouri; the line of demarcation on the south being thirty-six degrees and thirty minutes.[70] The entire Missouri question was before the Senate during the remainder of January, and the discussion in the Senate at this time covers two hundred pages of the *Annals*.[71] On February first, a vote was taken on Roberts' amendment and it lost by a large majority.[72] On the third, Thomas of Illinois offered an amendment to the Missouri bill, prohibiting slavery in all the Louisiana Purchase north of thirty-six degrees and thirty minutes, except in the proposed State of Missouri. This was the First Missouri Compromise as finally adopted.[73] Thomas later withdrew his amendment, and the debate continued beyond the middle of the month.[74] On the sixteenth, the Maine-Missouri bill was adopted by a vote of twenty-three to twenty-one. Thomas then proposed his thirty-six degrees and thirty minute amendment, and several attempts at changing it were voted down.[75] On the seventeenth, the Thomas amendment passed by a vote of thirty-four to ten, and on the eighteenth the Maine-Missouri bill, with this amendment, passed the Senate.[76]

In the meantime, the House had had the Missouri Question under consideration. On December 28th, the petitions of the

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[68] *Ibid.*, p. 119.
[69] *Ibid.*, pp. 119-156.
[70] *Ibid.*, pp. 157f.
[71] *Ibid.*, pp. 159-359.
[72] *Ibid.*, p. 359.
[73] *Ibid.*, p. 363; *Cf.* also pp. 360f.
[74] *Ibid.*, p. 367. On February 7th, Thomas withdrew his amendment. See also pp. 374-417.
[75] *Ibid.*, pp. 418-424.
[76] *Ibid.*, p. 430.

eight Missouri-Arkansas counties had been presented to that body, and on January third, Scott presented a petition and remonstrance of the Baptist Association of Mt. Zion, Howard county, Missouri Territory, protesting against the interference of Congress in the provisions of the constitution contemplated for Missouri upon its admission into the Union, and also against any restrictions on the rights of property.[77] It was on January 24th that the House took up in earnest the Missouri Question; and until February 19th, this was the single great subject under consideration.[78] On the latter day the Maine-Missouri bill of the Senate was taken up, and on the twenty-third the House, by a vote of ninety-three to seventy-two, "disagreed" to having the Missouri bill attached to the Maine bill, and then by a large vote further "disagreed" to all amendments of the Senate to the Maine bill.[79] The Missouri bill was taken up on the latter day and was discussed until the twenty-eighth, when the Senate informed the House that they insisted on their amendment to the Maine bill. It should be noticed that on the 26th Storrs of New York proposed an amendment to the Missouri bill which was practically the same as Thomas's amendment in the Senate.

The House, on receipt of the Senate's message, insisted by a vote of ninety-seven to seventy-six on "disagreeing" to the first eight sections of the Senate's amendment (the Missouri bill) to the Maine bill, and also by a vote of one hundred and sixty to fourteen disagreed to the Thomas amendment.[80] The Senate then asked the House to appoint a committee to meet with one they had appointed for a discussion in joint conference of the differences over the Maine-Missouri bill. On the same day the House negatived Storrs's amendment. On the day following, the House agreed to the conference asked by the Senate, and appointed five of its members to represent it. After discussing the Missouri bill, the House passed a slavery restriction amendment to it by a vote of ninety-four to eighty-six, and the bill, by a vote of ninety-three to eighty-four, was or-

[77] *Ibid.*, pp. 800, 848.

[78] *Ibid.*, pp. 937f., 940-947, 949-1042, 1046, 1064, 1069-1136, 1138-1170, 1172-1289, (II), 1291-1329, 1333-1403, 1405.

[79] *Ibid.*, II. 1405-10, 1412-50, 1453-57.

[80] *Ibid.*, pp. 1552-57. See also pp. 1457-1463, 1466-89, 1491-1541, 1552-55.

dered engrossed for the third reading.[81] On March first, the Missouri bill, with its slavery restriction amendment, passed the House by a vote of ninety-one to eighty-two, and was sent to the Senate.[82] When the separate Missouri House bill, prohibiting the further introduction of slavery in Missouri, reached the Senate on the second, that body at once proceeded to vote out the restriction and insert the Thomas amendment, and send it back to the House.[83] On this day, Holmes, chairman of the House committee in the Joint Conference, reported three recommendations: 1st that the Maine-Missouri bill be separated and pass as separate bills; 2d that the slavery restriction in the Missouri bill be stricken out; and 3d that the Thomas amendment be inserted in the Missouri bill. The House then struck out the slavery restriction by a vote of ninety to eighty-seven; inserted the Thomas amendment by a vote of one hundred thirty-four to forty-two; and passed the Missouri bill in this form.[84]

This ended the first Missouri fight in Congress, which had continued for two sessions of that body, and had absorbed the attention not only of the National Legislature but of the entire Nation. Thomas Jefferson, in a private letter, dated February 7, 1820, says: "It [*i. e.*, the Missouri Question] is the most portentous one which ever yet threatened our Union. In the gloomiest moment of the revolutionary war I never had any apprehensions equal to what I feel from this source." And again, in another letter, dated April 22, 1820, after the first fight had ended, he gloomily and prophetically adds: "But this momentous question, like a fire ball in the night, awakened and filled me with terror. I considered it at once as the knell of the Union. It is hushed, indeed, for the moment. But this is a reprieve only, not a single sentence."[85] The struggle in Congress revealed the desire of the House to place a restriction on slavery in Missouri, and the determination of the Senate to

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[81] *Ibid.*, pp. 1558-1568.
[82] *Ibid.*, pp. 1572f.
[83] *Ibid.*, I. pp. 467ff.
[84] *Ibid.*, II. pp. 1575-88.
[85] *Writings*, X. 156. (Letter to Hugh Nelson, dated February 7, 1820.) *Ibid.*, pp. 157f. (Letter to John Holmes, dated April 22, 1820.)

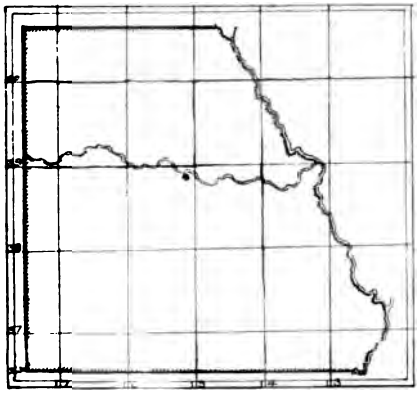
prevent this. The Compromise originated in the Senate and was the product of Thomas, who introduced it as a bill, then as an amendment; who withdrew it, and again introduced it as an amendment, which passed the Senate and, finally, the House. The amendment proposed by Thomas is practically the same as that of Storrs's in the House, but the former introduced his first. The Missouri Enabling Act was approved by President Monroe on March 6, 1820;[86] its provisions will now be considered in concluding this chapter.

The act of March 6, 1820, consisted of eight sections. The first section empowered the inhabitants of Missouri Territory, under such rules and regulations as were later set forth, to form a constitution and state government and to assume such name as they wished. It also declared that such state when formed should be admitted into the Union on an equal footing with the original states in all respects. It was in pursuance of this section and by virtue of the authority therein given to Missouri that the inhabitants of this territory, acting in a regularly constituted manner, framed and adopted a state constitution; organized and set in working a state government; and choose a name for their state. It is regrettable that the latter part of this section was not so readily carried out.

Section two defined the boundaries of the new state, which were the same as those set forth in article I of the Missouri Constitution of 1820. Curiously enough these boundaries were nearly the same as those requested in the popular memorials of 1817. The northern boundary in the memorial of 1817 was the same as that included in the Enabling Act of 1820, *i. e.*, about forty degrees and thirty-five minutes,[87] while, as set forth in the legislative memorial of 1818, it ran about one degree farther north or between sixty and seventy miles. The western boundary requested in the memorial of 1817 was the Osage boundary

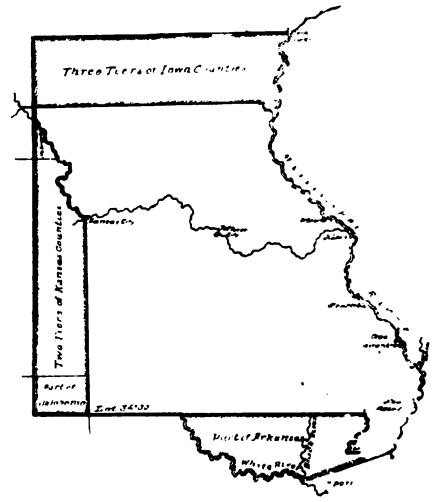
[86] *Stat. at Large*, III. 545ff; *Mo. Ter. Laws*, I. 628ff; *Annals of Congress*, Sixteenth Congress, first session, II. 2555ff.

[87] As we have noticed, the memorial of 1817 was confusing in its language on the northern boundary. That memorial speaks in one place of making the northern boundary coincide with the fortieth parallel, and in another with the Indian boundary line near the mouth of the Des Moines River. The Indian boundary line was later decided to be that surveyed by John C. Sullivan in 1816, and is about forty degrees and thirty-five minutes north latitude. Houck, *op. cit.*, I. 14f. Gannett, *Boundaries of United States*, pp. 122f.



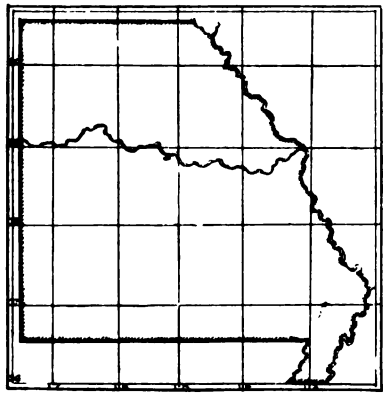
BOUNDARY OF MISSOURI AS FIRST SUGGESTED IN 1817.

From Houck's *Hist. of Mo.*, I. 3.



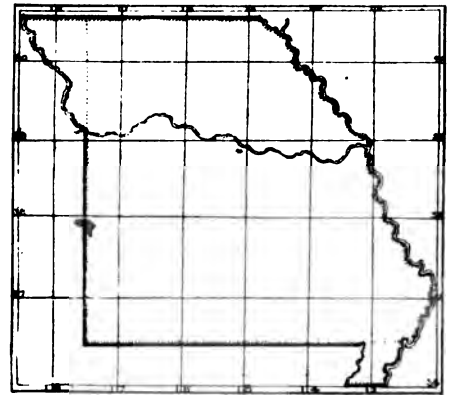
BOUNDARY OF MISSOURI AS SUGGESTED BY THE TERRITORIAL LEGISLATURE IN 1818.

From Houck's *Hist. of Mo.*, I. 5.



BOUNDARY OF MISSOURI AS ADOPTED BY CONGRESS IN 1820.

From Houck's *Hist. of Mo.*, I. 6.



BOUNDARY OF MISSOURI WITH THE PLATTE PURCHASE ADDED.

From Houck's *Hist. of Mo.*, I. 12.

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line, or a line about twenty-four miles east of the one adopted in the Enabling Act, which latter was a north and south line running through the mouth of the Kansas river: the boundary requested in the legislative memorial of 1818 was thirty miles to the west of the one named by Congress. The southern boundary set forth in the 1817 memorial was thirty-six degrees and thirty minutes, which was adopted by Congress, except to include the New Madrid strip between the Mississippi River and the St. Francois River as far as the thirty-sixth parallel. As has already been stated above, the legislative memorial of 1818 had asked for much more than this on the southeast. In both memorials and in the Enabling Act, the eastern boundary was naturally the Mississippi River. From this summary it is seen that Congress decided in favor of the 1817 petitions on the northern boundary; compromised between the petitions of 1817 and 1818 on the western boundary; and in general followed the petition of 1817 on the southern boundary, making, however, a slight concession on the extreme southeast in favor of the 1818 petition.

These extensive boundaries, which made Missouri at that time the second largest state geographically, were not obtained without some opposition in Congress,[88] and were probably the result of the activity of Missouri's Delegate in Congress. Scott said, in a letter regarding this: "I had some difficulties to encounter in regard to the boundaries of our state, these grew principally out of those petitions of a part of our citizens, that had for their object to make the Missouri River the dividing line. The comparatively small number of the whole mass of the people who signed these petitions, being only between five and six hundred signers, the obvious bad policy of the measure, and the dangers of delay, which our friends ardently saw must result from such a division enabled me to put the application aside, and that boundaries adjusted which are as large as I was able to obtain. The smaller states felt the weight of the larger states and did not want to increase their number, and the larger states did not want to create rivals to their preponderance." [89]

[88] Niles' Register, XVII. 440.

[89] *St. Louis Enquirer*, Aug. 2, 1820; *Missouri Intelligencer*, Aug. 12, 1820.

Congress further stated that these were to be the boundaries of this State: provided, that this State ratify them, "and provided also" that this State have concurrent jurisdiction on the Mississippi "and every other river bordering on the said State" so far as they form its boundary, and that the Mississippi River and the navigable rivers leading into it shall be "common highways, and forever free, as well to the inhabitants of the said State as to other citizens of the United States, without any tax, duty, import or toll therefor, imposed by the said State." The first proviso was carried out in article I of the Missouri Constitution of 1820, and the second in section 2 of article X.

The third section of the Enabling Act provided for the election of representatives to a constitutional convention. The electors included "all free white male citizens of the United States, who shall have arrived at the age of twenty-one years, and have resided in said territory three months previous to the day of election, and all other persons qualified to vote for representatives to the General Assembly of the said territory." This is one of the lowest qualifications for an elector that have ever obtained in Missouri. It is recalled that the act of Congress of June 4, 1812, relating to Missouri, provided that electors of representatives to the Territory Legislature were required to have resided in the territory twelve months before the election, and to have paid a territorial county tax assessment made at least six months before the election. The qualifications of electors as set forth in the Constitution of 1820 omitted the tax requirement, but required a residence of one year in the State and three months in the county or district.[90]

The forty-one representatives or delegates to the convention were apportioned among the fifteen counties of Missouri as follows: Howard, five; Cooper, three; Montgomery, two; Pike, one; Lincoln, one; St. Charles, three; Franklin, one; St. Louis, eight; Jefferson, one; Washington, three; Ste. Genevieve, four; Madison, one; Cape Girardeau, five; New Madrid, two; Wayne, including that portion of Lawrence county in Missouri, one.

This apportionment was manifestly unjust to certain counties, as is seen on consulting the United States census of Mis-

[90] *Missouri Constitution*, 1820, III. Sec. 10.

souri taken in August, 1820, by the United States Marshal.[91] Although there are individual exceptions, it is clear that the counties north of the Missouri river and the county of Cooper were the most unfairly dealt with in this apportionment. These counties contained a population of 32,859 and were apportioned only fifteen delegates, while the counties south of the Missouri river, excluding Cooper, contained a population of 33,745 and

[91] The *Missouri Intelligencer* of April 16, 1821, gives the total population of Missouri taken by the United States Marshal on August 1, 1820, as 66,604; the *U. S. Census* of 1850, p. 665, gives the population of Missouri in 1820 as 66,557; and the *U. S. Census* of 1900, *Pop.* I. pp. 27f., as 66,586. Following is the census of Missouri in 1820 arranged by counties:

	According to the Missouri Intelligencer, April 16, 1821.	According to United States Census, 1900.
Cape Girardeau	5,965	5,968
Cooper	6,959	6,959
Franklin	2,379	2,379
Howard	13,427	13,426
Jefferson	1,835	1,835
Lincoln	1,662	1,662
Madison	2,047	2,047
Montgomery	3,074	3,074
New Madrid	2,296	2,296
Pike	3,747	3,747
St. Charles	3,990	3,970
Ste. Genevieve	5,048	4,962
St. Louis	9,732	10,049
Washington	3,000	2,769
Wayne	1,443	1,443
Actual Total	66,604	66,586

The very slight difference in the census according to the two above sources is not sufficient to justify discussion in this work. It might be of interest to note that the (St. Louis) *Missouri Gazette* of March 14, 1821, gives the enumerated population of St. Louis by sex, color, and age, and its total is 9,732, or the same as the *Missouri Intelligencer* April 16, 1821. In this chapter, the figures of the *Missouri Intelligencer* will be used unless otherwise specified. However, the general statements made and conclusions reached hold equally true, is based on the 1820 census as set forth in the United States Census of 1900. The *St. Louis Enquirer* of March 31, 1821, gives the census the same as the *Missouri Intelligencer*, but omits Howard county. The total is given as 66,607, and the actual sum is 53,177. The difference is 13,430, which is practically the same as the *Intelligencer* gives for Howard county. The *U. S. Census* of 1830 (p. 23 of *Schedule of the Census of 1790, 1800, 1810 and 1820*) gives the same population of Missouri by counties for 1820 as the *U. S. Census* of 1900.

were given twenty-six delegates. Howard county, the largest and most populous county in Missouri, with a population of 13,427, was given five delegates; St. Louis county, with a population of 9,732, was given eight delegates; and Cape Girardeau county, with a population of 5,965, was given five delegates. Pike county, with a population of 3,747, had only one delegate; while Washington, with a population of 3,000, had three delegates. Cooper county, with a population of 6,959, had three delegates; and Ste. Genevieve county, with a population of 5,048, had four delegates. The counties that were apportioned one delegate for every 1,300 of their population or less were Cape Girardeau, Franklin, New Madrid, St. Louis, Ste. Genevieve, and Washington. All these were south of the Missouri river, and at that time were the homes of the leading lawyers and politicians of Missouri. A delegate from Washington county represented only 1,000 persons; from New Madrid, 1,148; from Franklin, 1,189; from Cape Girardeau, 1,193; from St. Louis, 1,216; from Ste. Genevieve, 1,262; and from St. Charles, 1,330: while a delegate from Pike county represented 3,747 persons; from Howard, 2, 685; from Cooper, 2,319; from Madison, 2,047; from Jefferson, 1,835; from Lincoln, 1,662; from Montgomery, 1,537; and from Wayne, 1,443. It is seen that, excepting Franklin county, most of the counties created in 1818 were unjustly dealt with; while the counties erected prior to that year were greatly favored, excepting Howard, which contained one-fifth of the population of Missouri in 1820, but was apportioned only one-eighth of the delegates to the Convention. When it is remembered that the three frontier counties, Howard, Cooper, and Pike, contained a population of 24,133, and received only nine delegates, while St. Louis county, with a population of 9,732, was apportioned eight delegates, the glaring injustice that had been done to the Boone's Lick and Salt River districts is plainly perceived.

One might object to these statements on the grounds that the apportionment of the delegates should be considered from the standpoint of the free white male inhabitants, and not on the basis of the total population, including whites and blacks. This would be a valid objection, considering that representatives

to the lower house of the Territorial Legislature had been apportioned on this basis since the establishment of the body in 1812, were it not for the fact that statistics regarding the white males of Missouri in 1820 furnish equal support to what we have said.[92]

As a matter of fact, the country north of the Missouri River and the county of Cooper had increased in population by leaps and bounds since the census of 1817. Nor was this a matter of mere sectional knowledge; it was observed and commented upon by both the writers and the newspapers of the day.[93] The inhabitants of the Boone's Lick country were not only aware of their numbers, but both Cooper and Howard counties protested strongly against the small number of convention delegates apportioned them by Congress. They not only resented being so unjustly discriminated against, but they especially feared that their section would not receive its due consideration in the many questions certain to arise in the convention. One of the main issues with them, an important issue all over the territory, was the location of the permanent seat of

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[92] Following is the number of free white male inhabitants in the various counties of Missouri in 1820 (*U. S. Census*, 1830, p. 23 of *Schedule of United States Census, 1790, 1800, 1810, 1820*): Cape Girardeau, 2,658; Cooper, 3,383; Franklin, 1,190; Howard, 6,160; Jefferson, 867; Lincoln, 799; Madison, 901; Montgomery, 1,425; New Madrid, 1,068; Pike, 1,749; St. Charles, 1,857; Ste. Genevieve, 2,071; St. Louis, 4,837; Washington, 1,286; Wayne, 750. If the same apportionment for delegates had obtained that was provided for representatives of the lower house of the general assembly by the law of February 1, 1817 (*Mo. Ter. Laws*, pp. 550f.), *i. e.*, one representative for every five hundred free white male inhabitants in each county, there would have been fifty-four delegates, of which twenty-seven would have been elected by the counties north of the Missouri River including Cooper county. Instead of this there was apportioned to those counties only fifteen delegates out of a total of forty-one. As a matter of fact, the Boone's Lick Country, including Cooper county and the counties north of the Missouri River, contained about one-half of both the total population and the free white male population of the territory in 1820. This section contained 15,373 free white male inhabitants, and the rest of the territory 15,628; the former had a total population of 32,859 persons, the latter, 33,745.

On the other hand, if the basis of apportionment for delegates had been the same that had been provided for representatives of the lower house of the territorial general assembly by the law of December 21, 1818, (*Mo. Ter. Laws*, pp. 609f.) *i. e.*, one representative for every seven hundred free white male inhabitants in each county, there would have been thirty-six, perhaps thirty-eight, delegates; of these the northern part of Missouri, including Cooper county, would have elected twenty-one.

[93] *Missouri Gazette*, June 9, 1819; Oct. 20, 1819; Jan. 26, 1820; Flint, *Recollections*, p. 201; *Missouri Intelligencer*, Apr. 1, 1820; Apr. 22, 1820.

government. The frontier Missouri River people wanted the capitol as far west as possible, or at least centrally located. They knew that the other districts would oppose this. On such an issue, the number of delegates which a section could produce was of the greatest importance. The only hope left to the Boone's Lick people was the calling of another election under a new apportionment, as provided for in section four of the Enabling Act.[94] It is now necessary to explain as far as possible why such an unjust apportionment was made; one of the first, but not the last, that has occurred in the history of this State.

Scott, in a letter to the people of Missouri, announcing his candidacy to Congress, which appeared in the *St. Louis*

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[94] The *Missouri Intelligencer* of April 1, 1820, gives the population of the Boone's Lick Country as 12,000. In an article in the *Missouri Intelligencer* of April 22, 1820, by one signing himself "Simon Crabtree," the following general statements are made that show how conversant the Howard-Cooper people were with the facts regarding this whole matter: Congress made the apportionment of delegates on the basis of the enumeration of 1818; by the enumeration of 1819 Howard and Cooper counties are entitled to twelve and not eight delegates; in 1818 Howard and Cooper had 4,128 free white males which, at one representative to each 500, gives eight representatives. (Note: There was no enumeration made in 1818, but the following statement shows that there was one made in 1819. It is important to notice this, as it will later be used in considering Scott's apology or explanation of this Congressional apportionment of 1820.) Now Howard has 3,862 free white males, and Cooper, 2,697, which would allow these counties seven and five delegates respectively (Note: This was far too low, as has been seen above.); in order to get the seat of government as near the center of State as possible, these counties must have more representatives; the Enabling Act permits the first convention to order a new election, and Congress inserted this provision knowing that eight new counties had been made, and that Missouri Territory north of the Missouri River had increased in population; those delegates favoring the seat of government in St. Louis will oppose a new election; therefore send men who will stand out for this. Pike county on Salt River has one representative, and it possibly should have five; Lincoln and St. Charles counties should also have more representatives, as they have greatly increased since 1818 (Note: Although Lincoln county was slightly discriminated against, the injustice done was nothing in comparison with the under apportionment of Pike, Howard, and Cooper counties; and St. Charles was not entitled to more than her three delegates, according to the United States Census of Missouri of 1820.); and in short, the population of all the new counties erected since the enumeration of 1818 was guessed at.

In the same issue of the *Intelligencer* appeared an article by David Todd, announcing, on April 14, 1820, his candidacy as a delegate from Howard county. In this, Mr. Todd says that the seat of government should be centrally located, but that "its immediate location in a central portion cannot be reasonably anticipated, when we reflect how unequal our representation is when compared with the lower part of the State; but efforts will be requisite to insure such a location even within a few years hence."

On May 13, 1820, an anonymous article under the caption, "A Missourian," appeared in the *Missouri Intelligencer* in which it is stated that, in order to get

Enquirer, August 2, 1820, gave quite a lengthy explanation or apology for the apportionment.[95] It is important in reading this explanation of Scott's to remember that he was running for Congress. In the first place, Scott stated that the apportionment of delegates was in his hands, and that, excepting three counties, the only enumeration of the inhabitants he had was the census of 1817, which was of little value, not only on account of its age, but especially because eight new counties had been erected in 1818 from the old counties.[96] In short he admitted that in apportioning the delegates for twelve counties, "it was neither more nor less than a matter of guess." He excused this ignorance on his part by citing the difficulties of the members of the convention when they apportioned the state senators and representatives to the first legislature, who, through lack of evidence on the population of the several counties, were themselves forced to compromise on this point. Finally, he stated that he had provided a remedy in the form of a new election and a new convention for correcting any discrimination in the apportionment of delegates.

This remedy for unequal apportionment was also included in the fourth section of the Enabling Act of Illinois.[97] The wording in both acts on this point is practically the same, and the slightest examination discloses its inherent defect. In effect, it placed the power of making a just apportionment in the hands of those who had been favored by an unjust apportionment, and in usual political practice such a provision has

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the seat of government near the center of the State, it will be necessary to call a new election, wherein Howard and Cooper counties would have more representatives. And on May 20, 1820, another article under the caption, "A Voter," states that the greatest thing in this convention is to be "properly represented according to the population of the several counties."

All these quotations and briefs of articles that appeared in the *Missouri Intelligencer* during the spring of 1820 have been given in order to show how keenly alive and wide awake the Boone's Lick people were on this matter of the apportionment of the delegates.

[95] This address of Mr. Scott's also appeared in the *Missouri Intelligencer* of August 12, 1820.

[96] Scott, in his letter, in referring to the eight old counties that were divided so as to form fifteen counties, probably includes Lawrence county among the eight. The eight *new* counties erected in 1818 were Wayne, Madison, Jefferson, Franklin, Cooper, Pike, Lincoln and Montgomery.

[97] *Stat. at Large*, III, 428ff. (Act of April 18, 1818).

been found to be about as efficacious as a prohibition against gerrymandering when the three branches of the government are of one political machine. The mere fact that the convention did not apply this remedy ought not, as Scott thought it should, exculpate him from censure.

That part of Scott's explanation which attempted to excuse his poor apportionment by citing the example of the delegates' compromise on legislative apportionment, appears to us the merest sophistry. Scott's difficulty in apportioning delegates, and the difficulty of the convention in apportioning representatives and senators, require only a few words to show their dissimilarity. Scott may have been in ignorance regarding the population of most of Missouri's counties, but it has been seen from articles that appeared in the *Missouri Intelligencer* that the delegates from Howard and Cooper at least knew approximately, if not exactly, the total number of white males in these two counties in 1819. There is no record besides Scott's statement that the convention delegates were embarrassed and finally forced to compromise on the apportionment of representatives and senators, but if such a condition existed it can easily be explained on the basis of the conflicting wishes of the several groups of delegates who were looking out for their own interests, perhaps at the expense of a just apportionment. The compromise in the convention, if there was one, was more probably based on interest than on ignorance; and the fact that certain counties had more delegates than they were entitled to probably helped to render a just apportionment impossible. But even though laboring under this difficulty, there was a far closer approximation to true representation according to population as followed by the Convention than by Scott.[98] In fact, considering the overwhelming strength of the delegates from those counties containing a minority of the inhabitants, as opposed by the comparatively few delegates from such populous counties as Howard, Cooper, and Pike, it is remark-

[98] See *Schedule* to *Constitution of 1820, sec.* 7. Following is a list of the counties of Missouri in 1820, and the number of delegates apportioned to each by Scott, and the number of representatives in the first State Legislature apportioned to each by the convention, together with the number of delegates that each county would have had if either the session act of the Missouri Territorial

able that such a just apportionment was made by the convention. That this body knew the approximate population of each county is evident from the number of representatives assigned to the several counties. In only five counties did a representative represent less than fifteen hundred persons, and these five counties elected only twelve representatives out of a total of thirty-nine. In only one county did a representative represent over two thousand persons, and this was in the case of Madison, with its population of 2,047, to which was allotted one representative. All the other counties were given one representative on a basis of population ranging from 1500 to 1873 persons. A representative from St. Louis county represented 1,622 persons, and from Howard county 1,678. Such an equality would have been remarkable under more propitious circumstances, and stands out in striking contrast to the apportionment in the Enabling Act.

Legislature of February 1, 1817, or that of December 21, 1818, had been followed in this apportionment. *Cf.* this with the population of the several counties as set forth in note 91, *supra*.

Counties.	Delegates, if apportioned by act of Missouri Legislature Feb. 1, 1817.	Delegates, if apportioned by act of Missouri Legislature Dec. 21, 1818.	Delegates to Convention by act of Congress, March 6, 1820.	Representatives in First State Legislature.
Cape Girardeau	5	3	5	4
Cooper	6	4	3	4
Franklin	2	1	1	2
Howard	12	8	5	8
Jefferson	1	1	1	1
Lincoln	1	1	1	1
Madison	1	1	1	1
Montgomery	2	2	2	2
New Madrid	2	1	2	2
Pike	3	2	1	2
St. Charles	3	2	3	3
Ste. Genevieve	4	2(3)	4	4
St. Louis	9	6(7)	8	6
Washington	2	1	3	2
Wayne	1	1	1	1
Totals	54	36	41	43

In concluding this matter of the apportionment of the delegates, it may be said that it could hardly have been more unjust to certain counties; that Scott's apology or explanation is more plausible before than after examination; that his ignorance of the development and increase of population in the Boone's Lick and Salt River countries was almost inexcusable, considering the publication of four newspapers in Missouri in 1819; and, finally, that his guessing at the apportioning of the delegates is remarkable, if nothing more, in its inaccuracy, being favorable towards the Mississippi River counties and their dependencies, and unfavorable to the northern and western frontier centers of population.

The discussion of the remainder of section three of the Enabling Act will now be resumed. The delegates were to be elected on the first Monday and two succeeding days of the following May, and the election was to be conducted in the same manner as those for representatives to the General Assembly.

Section four provided that the delegates should meet in convention at the seat of government on the second Monday of the following June and were given the privilege of adjourning to another place, and also of holding another election and apportionment of delegates if they saw fit to do so. This convention was given power "to form a Constitution and state government for the people within the said territory" of Missouri, provided: 1st, that the same "shall be republican" and "not repugnant to the constitution of the United States;" 2d, that the state legislature "shall never interfere with the primary disposal of the soil of the United States," etc.; 3d, that "no tax shall be imposed on lands, the property of the United States;" and 4th, that "in no case shall non-resident proprietors be taxed higher than residents." This entire section is practically the same as that of the Illinois Enabling Act of April 18, 1818.[99]

Section five provided that "until the next general census shall be taken, the said State shall be entitled to one representative in the House of Representatives of the United States."

In section six were set forth five propositions for the acceptance or rejection of the convention. If accepted by that

[99] *Stat. at Large*, III. pp. 428ff.

body they are to be binding upon the United States. The first proposition provided a grant to the State of the sixteenth section of land or its equivalent in each township for the use of schools in that township. The Territorial General Assembly in its third and sixth resolutions of November 22, 1818, had requested Missouri's delegate in Congress to "use his exertions to procure" from Congress a donation of "all vacant lots and pieces of ground, in towns or villages in which they lie, for the support of schools," and also two per cent of the sales of public lands in Missouri "for the support of the schools in the State." In this instance Congress adhered to its general custom of granting the sixteenth section of land in each township for the support of schools. Resting largely on this foundation grant and other Congressional grants is the present public school system of Missouri, with its State school fund which ranks among the largest of the several States. This grant was the origin of the "township school fund."[100] General regulations relating to this grant were included in Article VI of the Missouri Constitution of 1820.

The second proposition provided a grant by the national government to Missouri of "all salt springs, not exceeding twelve in number, with six sections of land adjoining each" for the use of this State. This grant was placed under the regulation of the State Legislature and it was provided "that the legislature shall never sell or lease the same, at any one time, for a longer period than ten years, without the consent of Congress." The Missouri Territorial Legislature on November 22, 1818, had in its first resolution asked the following donation from Congress: "Lead mines, with one section of land adjoining to each, and salt springs, with four sections of land adjoining each, to be leased for the use of the State." Delegate Scott said that he asked for a grant of some of the numerous lead mines of Missouri, but that this request was refused.[101]

[100] *Encyc. Hist. Mo.* V. 504.

[101] *St. Louis Enquirer*, Aug. 2, 1820. Letter of John Scott to the people of Missouri in his candidacy to Congress. Following is a part of this document, which has already been referred to:

"At the time of passing the law authorizing us to form a constitution and assume a state government, I perhaps had unexpected success in obtaining liberal grants, and donations to the state, for in addition to the grants usually made to

Congress provided in its third proposition a grant of five per cent of the net proceeds of the sale of public lands in Missouri made after January 1, 1821, "for making public roads and canals." Of this sum, three-fifths was under the direction of the state legislature for these objects within the State; and two-fifths under Congress for building highways leading to this State. It is interesting to note in this connection the requests made by the Missouri Territorial Legislature of 1818. Besides the three per cent grant under the direction of the Legislature "for opening roads and canals, and building bridges, within the State," that body also asked for a nine per cent grant under the direction of Congress to be applied as follows: 1st, one per cent "for perfecting the water communications between the Mississippi and lake [*sic*] Michigan, by the Illinois and Ouisconsin rivers;" 2d, six per cent "for continuing the national western turnpike road, from Wheeling, on the Ohio, to Saint Louis;" and 3d, two per cent "for opening a road direct from Saint Louis to New Orleans." From this is seen the great amount of concern that was centered in 1818 in Missouri over this question of roads and canals. Considering the great extent

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new states of two per cent out of the sales of the public lands to be laid out in roads and canals leading to the state, and three per cent from the same sales, to be appropriated to objects of Internal improvement within the state exclusively under the control of our own legislature, together with one section of land in each township, for the use of schools in these townships respectively, and the townships of land given for the erection and support of a state university, I was so fortunate as to obtain an extraordinary donation of twelve salt springs to be selected by the legislature, with six sections of land attached to each, to be used for state purposes. Those springs I hope, if prudently, economically and judiciously managed, will form a source of revenue to no small amount, the happy effects of which will be at no distant period to lighten the taxes, and burthens of the people. —I also selected other grants for state purposes, such as an additional per cent for purposes both of external and internal improvement and a portion of the numerous lead mines with which our country abounds; these however were refused, but the residue of the salt springs, and the lead mines, after the adjournment of the several private claims, will doubtless be disposed of as other public lands, and become subject to individual enterprise, thereby increasing our sources of commerce, and lessen to the people, the price of one of the most important necessaries of life."

Regarding Scott's remarkable success in obtaining so many salt springs, it might be noted that the second proposition in the sixth section of the Illinois Enabling Act a grant was made to Illinois of all the salt springs in that state, together with the land reserved for the use of same. (*Stat. at Large*, III. 428ff.)

We are not conversant with any work that treats of the history of these salt springs. The *Encyclopedia of the History of Missouri*, V. 477, contains a paragraph on the salt springs and "Saline Lands."

of the public domain at that time, it is perhaps true that more was asked for roads than for education.[102]

Congress granted to this State, in its fourth proposition, "four entire sections of land" "for the purpose of fixing their seat of government thereon." The Missouri Territorial Legislature in 1818 had asked Congress for a grant of "one entire township, to be disposed of as the legislature of the State shall direct, for the purpose of raising a fund for erecting State buildings, at the permanent seat of government." This rather extravagant request seems to have met with little favor in Congress, and was pared down to four sections of public land to be used for this purpose.

The fifth and last proposition of Congress contained a grant of thirty-six sections of land "together with the other lands heretofore reserved for that purpose" for the use of a seminary of learning. The management of this grant was vested in the State Legislature, and in section two of article VI of the Missouri Constitution of 1820, general regulations were set forth regarding it.[103] The grant for a university or seminary of learning is the same as was requested of Congress by the territorial legislature of 1818. Included under this fifth proposition were two provisos which were ratified by the Missouri constitutional convention of 1820 in "An Ordinance" of acceptance on July 19, 1820. In general, these two provisos were: 1st, that these five propositions were conditional on the consent of the Missouri constitutional convention providing by ordinance that

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[102] "This is a state fund made up of the proceeds of 3 per cent of all sales of United States public lands sold in the territory and State of Missouri, which by the act of Congress of 1822 were to be paid over to the State and used for the construction of roads and canals, three-fifths on works leading to the State. The receipts are small—only $597 in 1897 and $228 in 1898. The money is equally divided between the counties." *Ibid.*, V. 366.

In the Enabling Act of Illinois, Congress donated two per cent of the sale of public lands in that State to be used for making roads leading to the new state, and this was placed under the regulation of Congress; and three per cent was placed under the legislature of Illinois for the encouragement of learning, of which sum one-sixth was for a college or university. (*Stat. at Large*, III., 428ff.)

[103] The *Encyclopedia of the History of Missouri*, VI. 776, in an article on the University of Missouri, states that one of the permanent interest-bearing endowments of that institution is the following: "Proceeds of sales of forty-six thousand acres of seminary lands donated by Congress March 6, 1820, invested in a State certificate of indebtedness at six per cent per annum interest—$122,000.00."

A similar grant was made to Illinois. (See *Stat. at Large*, III. 428ff.)

all public lands of United States sold after January 1, 1821, should be exempt from all state, county or township taxes for five years from date of sale; and 2d, that bounty lands granted for military services during the war of 1812 should be exempt from taxes for three years from date of the patents providing these lands are held by the patentees or their heirs.

Section seven of the Enabling Act provided that an authenticated copy of the constitution of Missouri when framed, be transmitted to Congress. This was duly done by the Convention of 1820.

The last section of this act, section eight, contained the famous First Missouri Compromise, which has already been discussed; and also provided a brief fugitive slave enactment.

CHAPTER III.

POPULAR OPINION IN MISSOURI, 1819.

It is our purpose in this chapter to set forth the sentiment that prevailed in Missouri following the failure of the Fifteenth Congress in its second session (1818-1819) to pass an Enabling Act for Missouri; in the next chapter we will consider the election of delegates to the Missouri constitutional convention of 1820. The one is a study of the wave of protest and indignation that swept over Missouri after the House of Representatives during the winter of 1819 had attempted to impose a slavery restriction clause on that territory as a requisite for permission to form a state constitution; the other is not only a consideration of the election of delegates to Missouri's first constitutional convention, but also includes a treatment of the sentiment which prevailed in Missouri Territory in 1820 on the question of slavery. The former deals with Missouri's attitude towards Congress when that body attempted slavery restriction in Missouri: the latter considers, among other things, Missouri's attitude towards slavery itself.

The two attitudes are to a certain degree distinct, but the influence of the one on the other is always present. Questions arise that illustrate this latter point with clearness. For example: how much of Missouri's protest in 1819 against any Congressional restriction of slavery in this State was based on Missouri's constitutional scruples, and how much rested on her desire and determination to perpetuate slavery within her boundaries? or: to what extent was Missouri's election of pro-slavery and anti-restriction slavery delegates to her constitutional convention the result of her indignation against the attempt made by Congress to impose a slavery restriction on this State? We believe, however, that although thus closely related, these two subjects logically demand separate consideration.

In this chapter we will describe the sentiment in Missouri in 1819 as revealed (1) in the resolutions adopted at various

public meetings, (2) in the toasts drunk at public celebrations and dinners, (3) in the presentments of Grand Juries, (4) in the newspaper editorials, and (5) in the individual articles that appeared over noms-de-guerre. These are summarized, and from them together with the accounts of travelers in Missouri during that time are reached certain, definite conclusions on the subject at hand.[1]

One of the most reliable sources of information showing the sentiment in Missouri over the action of Congress during its session of 1818-1819, is the protests and resolutions drawn up and adopted at those public meetings, scattered over the Territory, that were assembled solely for this purpose. These public meetings were held from April to September of 1819 in the seven counties of Montgomery, St. Louis, Howard,[2] Washington, Ste. Genevieve, New Madrid and Cape Girardeau. No similar bodies are met with during the winter of 1820,[3] but in the spring of that year public gatherings again made their appearance in Missouri. These latter meetings did not, however, consider the past action of Congress, except in a very general way, but devoted their attention to the discussion of slavery within the proposed State and to the election of delegates to the constitutional convention. The popular gatherings of 1819 were almost wholly bodies that protested against the delayed admission of Missouri, and directed their protests against the majority in the House of Representatives who had attempted restricting slavery in the new state. Naturally the subject of slavery *in se* was discussed and sometimes included in the declarations of these meetings, and some light on the sentiment in Missouri on slavery can be obtained from their expressed

[1] The satisfactory and comprehensive character of the source material consulted obviates our referring to any secondary authority. Such secondary authorities as appear in foot-notes in the conclusions are mentioned only incidentally, and not as substantiating or negativing any conclusion drawn by us.

[2] The public meeting of Howard county which was held in Franklin, Missouri, represented the people of the entire Boone's Lick Country including Cooper county.

[3] This is not remarkable as the inhabitants of Missouri entertained the hope that the Congress of 1819-1820 would pass an enabling act for this State and not repeat the history of the session of 1818-1819. They undoubtedly had decided to wait till the end of the 1819-20 session before taking any action, and considering their recent activity in this line during the preceding summer, this was quite a reasonable course to follow.

language; but it must be emphasized here that these declarations on their surface were essentially protests against Congressional restriction. Whatever statements they made on the question of slavery *in se* are to be very carefully accepted or rejected and then only after strict historical criticism. Their greatest value on this point lies in their proper interpretation by the historian after a survey of the entire field of related facts has been made.

The first public meeting of this kind was held on the 28th of April, 1819 by the citizens of Montgomery county.[4] After much discussion three declarations and four resolutions were unanimously adopted. They declared that Missouri was entitled to admission under both the United States constitution and the treaty of cession, and that the only legal restriction that was applicable was that her state constitution should be republican; that Congress had hitherto appeared to them to be the "guardian of the inherent principles of freedom" but that the last House of Representatives had regarded Missouri "with the jealous eye of a partial step mother," and that Alabama had been admitted while this territory had been refused, unless its people "would stoop to a condition, which degrades them below the rank of free men, and lays the foundation of [a] slavery more abject than that which Congress pretends to be so zealous to reform;" that they viewed the action of the late House of Representatives as tantamount to a declaration "that they have a right to legislate for us in all cases whatsoever, a principle which United America resisted even to blood, in her glorious struggle for independence." They therefore resolved that the attempted restriction on Missouri's admission was "a daring stretch of power, an usurpation of our most sacred rights, unprecedented, unconstitutional, and in open violation of the 3d article of the treaty of cession entered into with France;" that they would "never cease to resist with firmness all such encroachments upon their rights" by every possible constitutional means;" that they regretted the necessity causing this protest, but duty impelled them to protect their constitution against "foreign or domestic foes;" that the present proceedings

[4] *Mo. Gaz.*, May 19, 1819; *St. Louis Enq.*, May 12, 1819.

be printed in the St. Louis papers. This meeting was a duly organized body with a president or chairman and a secretary, as were all the other meetings. It dealt with statehood and protested against congressional restriction being placed on Missouri's admission. Only once is slavery referred to: in the second declaration doubt is cast on the zeal of Congress in its reforms of slavery. However great their indignation, the framers of this protest were remarkably conservative and moderate in their language.

The second public meeting of protest was held in the city of St. Louis on May 15, 1819, and represented both the city and county of that name.[5] The meeting was held at the court house and met "pursuant to the request contained in the presentment of the Grand Jury of the last Superior Court." A large assemblage of both French and American citizens of note were in attendance, as well as strangers. The importance of this meeting is easily seen not only in the large body of citizens present but also in the men who guided it. Colonel Alexander McNair was its president and the Honorable David Barton secretary; both of these were delegates to the constitutional convention of 1820, and later the one was elected Missouri's first State Governor, the other one of her first United States Senators. Thomas Hart Benton, Missouri's United States Senator for thirty years, was the principal speaker, and laid before the meeting the first six resolutions, which were unanimously adopted after their phraseology had been adjusted by such eminent men as William C. Carr, Henry Geyer, Edward Bates, and Joshua Barton.

The first resolution adopted declared: "That the Congress of the United States have no right to control the provisions of a state constitution, except to preserve its republican character." [6]

[5] The (St. Louis) *Mo. Gaz.*, of May 19, 1819, contains a copy of the nine resolutions adopted together with a brief account of the meeting and its organization. A very complete account of this meeting, together with Thomas Hart Benton's speech delivered in defense of the resolutions he submitted for the ratification of the meeting, and also a copy of the resolutions adopted, are found in the *St. Louis Enq.*, of May 19, 1819.

[6] Benton's resolutions are not given verbatim in the report of the meeting by the *Enquirer* of May 19, 1819, but only what his resolutions "imported." The import of Benton's six resolutions is the same as the first six adopted.

The second resolution stated that to prohibit slavery in Missouri would be "equally contrary to the rights of the State, and to the welfare of the slaves themselves." [7] The third resolution declared Missouri's population so much exceeded that of other territories when admitted that the obstruction of the majority in the last House of Representatives to admitting her "was an outrage on the principles of the American Constitution, and a direct infraction of the third article of the treaty of cession." [8] The fourth resolution stated: "That the right of the Missouri territory to be admitted into the union of the states, depends not upon the will of Congress, but upon the treaty of cession, and the principles of the federal constitution." The fifth resolution is so startling and bold in its language that it is given here in full: "5th Resolves, That the people of this territory have a right to meet in convention by their own authority, and to form a constitution and state government, whenever they shall deem it expedient to do so, and that a second determination on the part of Congress to refuse them admittance upon an equal footing with the original states, will make it ex-

[7] Benton in his argument supporting this resolution said the proposed slavery restriction infringed Missouri's sovereignty as protected by both the Federal constitution and the treaty of cession, and denied to Missourians the right of "deciding the question of slavery according to their own will." He added that it was "unfriendly to the slaves themselves" as it tended to confine them to the South where their condition was notoriously harsher and more severe than in the North. He said "that the effect of the restriction was not to diminish the *quantum* of slavery in the Republic," as in Illinois where a similar restriction applied it had not given liberty to the slaves and "a free black was [a] rare bird there, unless he was a refugee from a neighboring State." Nor was the restriction of any value in Illinois, he said, as applied "to those which it intended should be born free" since "they were not *born there*, but in the south, to which their mothers are carried before delivery." He concluded his argument on this resolution by saying that if the restrictions went "forward to the time (if such a time was ahead) when the abolition of slavery throughout the Republic should be the order of the day" then "it might be that the people of Missouri would go *voluntarily* as far . . . . . as any other portion of the union; but until that time arrives, no process of reasoning can make it right that they should be *forced* to the surrender of their slaves" etc.

[8] Benton supported this resolution by stating: (1) that Missouri's population was larger than that of the states of Ohio, Indiana, Illinois, Tennessee, and Mississippi when admitted; (2) that Missouri's training as a territory better justified her admission than that of other territories; (3) that the character of Missouri's settlers from Tennessee, Kentucky, and the mother states of these two was high enough for governing either themselves or others; and (4) that both the constitution and the treaty of cession made it imperative upon Congress to admit Missouri.

pedient to exercise that right." [9] Continuing on this point the sixth resolution stated: "That a constitution so formed cannot be disapproved by Congress for any other cause, than for anti-republican features; and if disapproved upon any other pretext, it will be equivalent to an attempt to exclude the territory of Missouri from the federation of the states." [10] Benton in concluding his speech favoring these six resolutions "begged the meeting to consider well the resolutions which were offered. The eyes of the American people were upon them. They were, the first to whose lot it had fallen to make a fair and regular stand against the encroachment of Congress upon the Sovereignty of the States. The resolutions were intended to be mild in their language, strong in their import; and if once adopted, he knew that they would never be lightly abandoned." The *St. Louis Enquirer* stated that "several citizens were ready to speak" in support of these resolutions after they had been read; "but no one" spoke against them and they were "unanimously passed." A resolution approving Scott's conduct in Congress in defending Missouri was proposed by David Barton and was unanimously passed. Carr submitted a resolution recommending similar meetings throughout the Territory. Some opposed this on the ground that although favoring its object they wished all such meetings "to be so entirely the spontaneous act of the people, as not even to be under the influence of a request." The resolution was, however, passed by a considerable majority. The final resolution adopted at this meeting

[9] Benton said in support of the right of Missouri to hold a constitutional convention without the authority of a previous law that examples of such action could be found in the convention of the original colonies when they withdrew from England and also in the case of Tennessee in 1796. In regard to the *expediency* of calling a convention, Benton favored waiting the action of the next session of Congress, and if that body repeated the history of the last session, then "as one of the people he was ready to declare himself now, and to stand committed from this day forth upon the issue of the declaration: *He would be for the call of the convention*, etc." Benton then proceeded to attack the selfish and political motives that had actuated the majority of the last House of Representatives.

[10] Benton strongly endorsed this scheme and said that Congress would have to accept such a Constitution as it had done with the Tennessee Constitution of 1796. He added: "No matter what might be the honest wishes of some mistaken philanthropists; or the selfish or criminal projects of some designing politicians. The dreams of the first would be at an end; the second could not proceed without peril to themselves."

was that the resolutions be signed and printed and a copy forwarded to Missouri's Delegate in Congress.

This meeting was so open and well attended, and included so many of the leaders of St. Louis county, that we have no hesitancy in accepting it as expressing the real feelings and sentiments of the people of that district on the question of Congressional restriction of slavery in Missouri.[11] The gathering unanimously opposed such restriction, and although a tone of calmness and conservatism pervades the resolutions, the meeting went so far as to express its wishes on questions which might arise in the future. Benton's speech throws some light on the Missourian's attitude on slavery. He opposed slavery in general terms but favored it in Missouri. He considered slavery a local issue and resented Congressional interference, and looked with suspicion on Congress' philanthropy when directed to one spot—Missouri.

In pursuance of the eighth resolution adopted May 15, 1819, recommending public meetings throughout the Territory, a number of citizens of St. Ferdinand township, in the county of St. Louis, met on June 5, 1819, and unanimously adopted a set of anti-slavery resolutions.[11] So far as we could learn, this was the only anti-slavery public meeting held in Missouri in that year. The resolutions adopted at this meeting stated: "the amendment to the Missouri state bill in the House of Representatives of the United States, meets with our full approbation;" "slavery is contrary to the term freedom;" slavery "is one of the greatest evils" in the United States "and if not protested against" will "bring upon us" the just censure of posterity, "as well as the judgment of a just, but *angry God*;" public meetings should be held throughout the territory to protest against the "threatening curse of the further admittance

[11] John O'Fallon in a letter, dated St. Louis, May 20, 1819, to Gen. T. A. Smith wrote as follows on this meeting: "At a large assemblange [*sic*] of the Town and country people on last saturday [*sic*] were unanimously adopted some very strong resolutions in regard to the conditions attempted to be imposed on the Bill for erecting this Ty. into a state; I hope, most ardently, that similar ones may be adopted by the other counties, which, if known abroad, would remove the apprehension that prevent numbers of slaveholders from removing to this country." In *T. A. Smith Mss.*, State Hist Soc. of Mo.

[11] *Mo. Gaz.*, June 23, 1819.

of involuntary slavery in the future state of Missouri." More of a similar nature was included, and it may be definitely stated that these resolutions were strongly anti-slavery in character. They were ordered printed in the Missouri Gazette, and they appeared in that paper. From the lack of comment on this meeting by the Missouri press of that day, and from the general description of it and its officers, there is a strong probability that it was little more than a mere township meeting and was not at all a numerous gathering.

The next public meeting in Missouri assembled for the purpose of discussing the question of Congressional restriction was held on June 18th at Franklin, Howard County.[12] A committee was appointed to draft resolutions against the "unwarrantable restrictions" on Missouri contemplated by Congress, and it was resolved that these resolutions be read at a public meeting to be held at Franklin on July 5th for the approbation of the people.

The greatest publicity then possible was given this "National Anniversary" meeting on July 5th, and hundreds of citizens of the Boone's Lick Country were present in Franklin on that day.[13] The committee appointed on June 18th reported to this body six resolutions, which were unanimously adopted. These resolutions voiced the strong protest of the Boone's Lick people against the proposed Congressional restriction on slavery in Missouri. They emphasized the point that Missouri should have the exercise of her own municipal affairs, among which they placed "the establishment or exclusion of slavery." The resolutions were short and did not take up the consideration of slavery *in se*. It was resolved that these resolutions be printed in the Franklin "*Missouri Intelligencer*," the St. Louis newspapers, and the "*National Intelligencer*" of Washington, D. C.

The remarks of Henry Carroll made at this meeting are worthy of notice. Besides discussing the general constitutional

[12] *Mo. Intell.*, June 25, 1819.

[13] *Ibid.*, July 9, 1819. So important was this meeting in the eyes of the editor of the *Mo. Intell.*, that the account of it crowded out even the advertisements for that week.

phases of the question of restriction and also some of the same points made by Benton in his speech in St. Louis of May 15th, Carroll said: "The real question is not the right of Congress to legislate in the manner proposed for the Territory, but for the State of Missouri. Once admitted, it is apparent that a convention might be assembled to alter or modify her constitution, and therefore to erase the obnoxious feature. But I do trust that those among whom I have cast my lot will not 'stoop' to conquer their rights, and will spurn to juggle for them in a game of duplicity, trick, or subterfuge." Carroll also said that he regretted the existence of slavery and that he would help wipe it out if it would not thereby check immigration from Southern kinsmen. From this short account of the meeting it is quite apparent that the sentiment in the Boone's Lick country on the question of restriction of slavery on the part of Congress was the same as that which prevailed in St. Louis and Montgomery counties.

On July 20, 1819, a public meeting of the citizens of Washington county was held at the court house in Potosi, Missouri, in pursuance of public advertisements.[14] There were eight resolutions unanimously agreed to at this meeting. These resolutions were, however, practically identical with those adopted at the St. Louis meeting of May 15th, and therefore, will not be analyzed.[15]

Within two weeks after the Potosi meeting a similar one was held by the citizens of the county of Ste. Genevieve at the court house in the town of Ste. Genevieve.[16] This meeting was held on August 2, 1819, and elected General Henry Dodge president, and Judge John D. Cook secretary of the assembly. Both of these men were elected as delegates to the constitutional convention of Missouri in 1820, and later held the high positions

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[14] An account of this meeting and the resolutions adopted appear in all the newspapers then printed in Missouri: *Mo. Gas.*, August 4, 1819; *St. Louis Enq.*, August 4, 1819; *Jackson* (Missouri) *Herald*, August 20, 1819; *Mo. Intell.*, (Franklin) August 20, 1819.

[15] Even the order of the two sets of resolutions is the same except that the eighth resolution adopted at the St. Louis meeting was omitted from the Potosi resolutions.

[16] An account of this meeting appears in the *Jackson* (Missouri) *Herald*, August 13, 1819, and in the *St. Louis Enq.*, August 25, 1819.

in both state and nation. The general tone of the seven resolutions adopted at this meeting, although quite similar to that of the resolutions of the other counties, differs from the latter in partaking more of a judicial and constitutional character. Nothing was said concerning slavery, stress being laid on the United States constitution and the treaty of cession. The only noteworthy resolution is the seventh, in which the *Missouri Gazette* was not mentioned with the other Missouri newspapers that were requested to print the resolutions of this meeting.

At a meeting of the citizens of New Madrid county on September 14, 1819, a set of six resolutions similar to those of Ste. Genevieve county was adopted.[17] The third resolution adopted at New Madrid is the most noteworthy of all, although it contains no new declaration. Its language is as follows: "Resolved, that we believe it to be a part of our *absolute* rights to form such a constitution for the government of our state as we shall deem proper, (provided the same be republican) without any control from the general government, or subject to any conditions imposed by them." These citizens viewed "with regret and astonishment the assumption of authority on the part of Congress to dictate" to them "in matters of internal policy;" and declared that they would "be admitted into the Union on an equal standing or not at all." The *Missouri Gazette* is again omitted from the list of newspapers that were requested to publish these resolutions.

The last public meeting held in Missouri in 1819 which was convened expressly for the purpose of protesting against the attempted restriction of Congress, was in Cape Girardeau county. A notice of such a meeting to be held in Jackson, Missouri, on September 18th, is set forth in the *Jackson Herald* of September 4, 1819. Its purpose was to consider "the state of the county[18] and the restrictions attempted to be laid upon the future state of Missouri by the last Congress," etc. After

[17] *Mo. Intell.*, November 5, 1819; *Jackson Herald*, September 18, 1819. The resolutions are given in full in these two papers but are not copied here owing to the fact that they include nothing new in the way of either argument or protest.

[18] The author's notes on this quotation contain the abbreviation "Co."; it is possible that this word is "country" and not "county."

a careful examination of the files of the *Jackson Herald* we failed to find an account of the proceedings of this meeting.

Of great interest and value are the declarations and protests that the Mount Pleasant Baptist Association adopted at its meeting at Mount Zion, Howard county, on September 11-13, 1819. These declarations were addressed "To the Senate and House of Representatives of the United States of America, in Congress Assembled," and were signed by Edward Turner as moderator and Geo. Stapleton as clerk.[19] The Boone's Lick people protested against the restriction of slavery in Missouri by Congress, and declared it not only violated the constitution and cession of treaty, but also worked a hardship on the slaves. They said that "altho with Washington, Jefferson, & every other person," they regretted "the existence of slavery at all," and although they felt it their "duty to alleviate the situation of the unfortunate beings who" were its subjects among them; and that although they looked "forward to the time when a happy emancipation" could "be effected, consistent with the principles of safety and justice," still they thought that the constitution and treaty of cession gave Missouri the right to a free admission without restriction. They also declared that they maintained that their right to slaves was "secured by the treaty of cession," and that "the question of slavery" was one which belonged exclusively to the state to decide.[20]

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[19] *Mo. Intell.*, October 1, 1819; *Niles' Register*, XVII. 200f.

[20] "The constitution does not admit slaves to be freemen: i[t] does admit them to be *property*, and guarantees to the master an ownership, which his fellow-citizens living in another state holding other principles cannot legislate from him; and as under the constitution, a sister state cannot emancipate those slaves who flee to its jurisdiction, and as the power is not expressly delegated to congress, they cannot emancipate a slave, for the right is reserved to the people. And if they cannot emancipate a slave in a state, and it be lawful to hold slaves in this territory, congress neither have the right to emancipate our slaves whilst we live under a territorial form, nor under a state government, for by the treaty of cession, congress are not only bound to admit us into the union, but are bound to protect us in the free enjoyment of our liberty and property—and therefore, not only our rights to admission into the union, but our right to hold slaves is secured by the treaty of cession, which is ratified by the President and Senate, and also by several acts of congress."

. . . . . .

"And believing that the policy proposed in the restriction will not only cause jealousy, foment discord, and shake the foundation of our government, but by confining them [the slaves] to one small district, will increase the task, augment

It is worth noticing that had this association been as pro-slavery in sentiment as it professed to be anti-slavery, it could hardly have adopted a stronger set of resolutions favoring that institution than it did. These resolutions could scarcely have been welcomed in the anti-slavery section of the Nation as showing a sentiment in Missouri that favored slavery restriction, unless extracts were quoted and not the entire document.

Closely related to the resolutions of public meetings in Missouri in 1819 as showing the sentiment here over the attempted restriction by Congress, are some of the toasts drunk at dinners and celebrations in the proposed State. Those toasts that bear on the questions of statehood and slavery reflect public opinion on these subjects and should be carefully considered for the light they throw on this study.

On May 29, 1819, the citizens of Franklin, Howard county, Missouri, gave a public dinner to Captain Nelson in honor of the arrival of the steamboat "Independence." [21] Many toasts were drunk at this dinner and one of the speakers, General Duff Green, was later elected a delegate from Howard county to the constitutional convention. Following are several of these toasts: both their number and language show how concerned were the banqueters over statehood and related subjects.

"The Missouri Territory—Desirous to be numbered with the States in constitutional principles—but determined never to submit to congressional usurpation."

"By Gen. D. Green—The Union—it is dear to us; but liberty is dearer."

"By Stephen Rector, Esq.—may the Missourians defend their rights, if necessary, even at the expense of blood, against the unprecedented restriction which was attempted to be imposed on them by the Congress of the U. States."

"By N. Patten, Jr.—The Missouri territory—its future prosperity and greatness cannot be checked by the caprice by a few men in Congress, while it possesses a soil of inexhaustible fertility, abundant resources, and a body of intelligent, enterprising, independent freemen."

"By Maj. J. D. Wilcox—The citizens of Missouri—may they never become a member of the Union under the restriction relative to slavery."

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the pains and rivet the chains of the slaves, we warn you in the name of humanity itself to beware."

"The time has arrived when it is possible to admit us into the union—we have all the means necessary for a state government. And believing the question of slavery is one which belongs exclusively to the state to deside [*sic*] on, we, on behalf of ourselves, our fellow citizens, and of the most solemn faith of the nation, claim admission into the union on the principles of the *Federal Constitution*—on an equal footing with the other states."

[21] *Mo. Intell.*, June 4, 1819. This steamboat arrived at Franklin on May 28th and holds the honor of being the first steamboat to make the run up the Missouri River.

At a dinner given on a like occasion at Chariton, Howard county, Missouri, on June 1st, at which Major J. S. Findlay presided and Colonel D. Green was vice-president,[22] the following toasts were drunk:

"The Missouri Territory—if not 'embarassed by too much regulation,' it will soon form a distinguished member of the Union."

"The people of Missouri—Keen to discern their rights, and firm to maintain them; they acknowledge no arbitrary right of restriction in the formation of their constitution."

"By Capt. R. M. Desha, of the Marine corps. The *Independent Missourians* —may they always reject any improper, unconstitutional restrictions imposed upon them by the national legislature."

At a public dinner given in St. Louis on June 10th, at which the principal leaders of the day were present, the following toasts were drunk:[23]

"*The members of the late Congress* who supported the constitutional rights of the Territory of Missouri."

"Mr. Scott, the Missouri Delegate in Congress—He spoke our sentiments in defence of Missouri State rights."

The Future State of Missouri—Equal in sovereignty to the original states, or—nothing—

Repeated cheerings—music.

Bonaparte's march—reiterated discharges of artillery" etc.

It was at the various Fourth of July celebrations held on July 5th, 1819, that the largest number of toasts on this subject were set forth by the press. In Howard county a large celebration was held at Franklin and of the sixteen set toasts and the twenty-two volunteer toasts, one-half related to the Missouri statehood bill.[24] One of the former was:

"The People of Missouri—keen to discern their *rights*, and vigorous in the defence of them."

Several of the latter were:

"By Doct. J. J. Lowry—The People of the Missouri Territory; may they be as firm in resisting domestic usurpation; as they have been in repelling foreign violence."

"By L. W. Boggs, Esq.—The Hon. John Scott, our Delegate to Congress; he has supported *our* rights; *we* will support *him*."

"By Maj. Richard Gentry—Talmadge and Taylor—a dark room and straight jackets."

"By Maj. T. Berry—The people of the Western and Southern States; they ought to view with jealousy the sinister designs of the Eastern states."

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[22] *Mo. Intell.*, June 11, 1819. Both Findlay and Green were later elected delegates from Howard county.

[23] *St. Louis Enq.*, June 23, 1819. General Rector was president of the day and was assisted by Colonel Chouteau, Major Christy, and Colonel Benton.

[24] *Mo. Intell.*, July 16, 1819.

In Montgomery county the celebration was held at Marthasville, and the toasts given were similar to the foregoing.[25] In St. Charles several celebrations were held which were noticed by the press, and the Missouri statehood question was prominently set forth in the toasts given.[26]

In St. Louis county at least three celebrations were held: two in the town of St. Louis; one in Saint Ferdinand township.

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[25] *St. Louis Enq.*, July 14, 1819. Following are a few of the toasts given at this celebration:

"The members of the late Congress—Who supported the constitution of the United States, and their treaty with France, in the discussion of the Missouri state Bill."

"Mr. John Scott—Our member in congress, he supported the rights of his constituents with a manly dignity in the last session of Congress."

"The people of Missouri—They want no Congressional provision in forming their constitution, they will provide for themselves."

"Messrs. Shaw and Holmes—Two Yankee republicans, they deserve well of their country, may they reform the apostate politicians of the north."

"Messrs. Talmadge and Taylor—Politically insane, may the next Congress appoint them a dark room, a straight waistcoat and a thin water gruel diet."

"The Sovereignty of the State—May seventy-eight men, inimical to it, clothed with the authority of the people, never meet again in Congress Hall."

"The Citizens of our Mother States—May they not be deterred from emigration to this land of Liberty and Plenty, in consequence of those unconstitutional restrictions attempted to be imposed on us in the late Congress, nor want confidence in our firmness and integrity to resist such outrages upon our rights and privileges."

"The Fair of Missouri—May they take none to their arms, nor grace any with their charms but those who defend the rights of Missouri."

[26] *St. Louis Enq.*, July 21, 1819; *Mo. Gaz.*, July 14, 28, 1819. Following is a copy of one of these meetings:

"Monroe, July 5th, 1819.

Mr. Charless.

As a writer stiling himself "A farmer of St. Charles county," has said so much about the political sentiments of that people; I here send you three toasts, which were drank and cordially cheered by a number of respectable citizens of that county, at a celebration of the 4th instant.

1st. The Senate of the U. States, magnanimous and great—They frowned on the violence of the lower house, and arrested them, when charging over the pales of the constitution to seize on the rights of Missouri.

2d. The honorable Henry Clay, esq., speaker of the House of Representatives.—Firm and unshaken he arose against the majority, and pointed out to them the inconsistency of their attempting to legislate away the rights of any part of the community.

3d. The territory of Missouri—whose rights have been so wantonly assailed.—May her grievances be redressed, and when seated among the sister states, may she forget the abuse they have offered her.

Yours respectfully,

JOHN LINDSEY."

One of the St. Louis celebrations was held at "Lucas' spring" and two of the toasts given were:[27]

"The United States—they are the protectors of the territories—their natural friends—without distrust or jealousy we expect from them a due regard to our rights."

"Our neighbor, the state of Illinois—homogeneous in its population, it has not been compelled to compromise or sport with the principles of justice."

At the other celebration in the town of St. Louis, Colonel Auguste Chouteau was president, and several of the toasts given were: [28]

"The Next Congress—A sacred regard for the Constitution in preference to measures of supposed expediency, will ensure to them the confidence of the American people."—"Nineteen cheers. Yankee Doodle (music)."

"The Territory of Missouri—With a population of near 100,000 souls, demands her right to be admitted into the union, on an equal footing with the original states."—"Nineteen cheers—'Scott's o'er the border' "

The toasts given at the celebration in Saint Ferdinand township reflect quite a different sentiment to the public meeting held there on June 5, 1819.[29] Following are several of the toasts given:

"The Constitution of the United States—A safe guard to our Liberty." "Thirteen cheers."

"The Territory of Missouri—May she be admitted into the Union on an equal footing with the original States, or not received in any other way."—"Drank standing up.—Twenty-two cheers."

Later in the month of July, 1819, a public dinner was given at Franklin, Howard county, "to the officers attached to the expedition destined for the Yellow Stone." Two of the toasts drunk were:[30]

"The Territory of Missouri—to yield to a restriction or condition of whatever nature at the will of Congress, would be parting with an attribute of sovereignty."

"The citizens of the Missouri territory; a population who understand their rights, and know how to maintain them."

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[27] *Mo. Gaz.*, July 7, 1819. The springs were owned by Judge John B. C. Lucas, and the meeting held there was a rival of the Chouteau gathering of that day. It does not seem to have been so well attended as the other meeting, and it was not so strong in its protests against Congress. The reference to the homogeneous character of Illinois' population was a veiled attempt to make prominent the supposed divided or heterogeneous character of Missouri's population.

[28] *Mo. Gaz.*, July 14, 1819; *St. Louis Enq.*, July 14, 1819. These two toasts received the largest number of cheers.

[29] *St. Louis Enq.*, July 21, 1819.

[30] *Mo. Intell.*, July 30, 1819. The dinner was given on the thirteenth of July.

The last celebration of this character, recorded by the press, prior to the passage of the Enabling Act, was by the Irish of St. Louis on March 17, 1820.[31] One of the toasts drunk was:

"The Missouri Territory—Her entitled rank among the states of the union, and a constitution of her own choice."

Excepting the resolutions adopted at the various public meetings held in Missouri in 1819, perhaps the truest guide to the sentiment that obtained in this territory at that time regarding the questions of Congressional restriction of slavery and incidentally of slavery itself, is the public presentments and remonstrances of that class of semi-official bodies known as Grand Juries. There are eight of these documents recorded in those newspapers of that day which have been preserved in the various libraries of the country. Seven of these presentments were framed by the Grand Juries of the Circuit Courts for the counties of St. Louis, St. Charles, Howard, Jefferson, Lincoln, Montgomery, and Washington; and one by the Grand Jurors of the Superior Court of Missouri sitting for the Northern Circuit. It is thus seen that taken in connection with the public meetings heretofore described, we are enabled to give a fairly trustworthy account of the feeling in Missouri in nine counties of that territory in 1819.

The first Grand Jury to return a presentment of this nature was that for St. Louis county, of the Circuit Court for the Northern Circuit of the Territory of Missouri. This presentment was made on or about April 5, 1819, and is signed by eighteen members of the inquest and attested by the clerk of the court.[32] It protests against the restriction on Missouri attempted by the last Congress, as being contrary to the constitution and the treaty of cession. And states: "Although we deprecate anything like an idea of disunion, ..., yet we feel it our duty to take a manly and dignified stand for our rights and privileges . . . . . "

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[31] *Mo. Gaz.*, March 22, 1820. The date of the celebration is given as February 17th but it is quite probable that this is a typographical error, and should have been March 17th.

[32] A copy of this presentment was printed in the *Mo. Gaz.*, April 14, 1819, and in the *St. Louis Enq.*, April 14, 1819.

Following this presentment a similar one was returned, April 30, 1819, by the Grand Jurors of the Superior Court of Missouri territory, sitting at St. Louis, for the Northern Circuit.[23] This latter document protests against the attempt made by Congress to dictate a provision in the constitution of Missouri however inconsiderable that provision might be; "but in the one proposed, *the prohibition of the further introduction and continuance of slavery in the future state of Missouri*," it believes that all the slave-holding states are vitally menaced and threatened with eventual destruction. The Grand Jurors further said that this act of Congress was contrary to the treaty of cession and also "unfriendly to the slaves themselves." They concluded this protest by stating that they believed "it the duty of the people of Missouri to make known in the most public manner that they are acquainted with their own rights and are determined to maintain them" and recommended "a public meeting of the citizens at the Court House in St. Louis" on the 15th of May next.

All the Grand Jury presentments returned in 1819 on this subject after the two protests in April, 1819, at St. Louis, were in July. One of these was the presentment of the Grand Jury for the Circuit Court of St. Charles county, which was returned on July 6th.[24] It based its objection to the attempted restriction by Congress on constitutional grounds and on the treaty of cession.

The Howard county Grand Jury in their presentment of July 14th not only set forth the constitutional objections to the past action of Congress but declared: "It is not now the question whether the future admission of slavery be just or unjust—wise or unwise. That question will be met at another time and another place. We deny that Congress have any right to pass upon it. It belongs to the people of the future state of Missouri, and to them alone." It stated, however, that "The

[23] A copy of this presentment was printed in the *Mo. Gaz.*, May 12, 1819, and in the *St. Louis Enq.*, May 5, 1819. Scharf, *op. cit.*, I. 562, also contains extracts from this document.

[24] *Mo. Intell.*, July 30, 1819; *Mo. Gaz.*, July 14, 1819.

Grand Jury feel no disposition to impugn the motives of the majority of the house of representatives." [25]

The Grand Jury of Jefferson county also viewed with regret the attempt made by Congress to dictate an article in Missouri's Constitution prohibiting the future introduction of slavery in that state. They said: "That slavery is an evil we do not pretend to deny, but on the contrary would most cheerfully join in any measures to abolish it, provided those measures were not likely to produce greater evils to the people than the one complained of; but we hold the power of regulating this matter—of applying a remedy to this evil, to belong to the states and to the people, and not to Congress." They added: "The right of holding slaves, although it may not be a natural right, is one which is allowed by the federal constitution," etc. Their argument rested entirely on constitutional grounds and emphasized the right of a state to regulate its internal affairs.[26] The Grand Jury of Lincoln county presented a very short protest against the attempted restriction which they considered contrary to the constitution. They expressed a hope that when the question of admitting Missouri was again agitated in Congress that "the true genuine and republican spirit of the Constitution" be consulted, and, they added, "have its influence unimpeded by mistaken notions of philanthropy or the direful genius of usurpation." [27]

The Grand Jury for Montgomery county viewed "the restrictions attempted to be imposed on the people of the Missouri territory in the formation of a state constitution" as "unlawful, unconstitutional, and oppressive." They added that they hoped those restrictions would "never more be attempted; and if they should," they hoped "by the assistance of

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[25] *Mo. Intell.*, July 16, 1819. A full copy of this presentment is found in the *Intelligencer* and is signed by J. S. Findlay, Benjamin H. Reeves, and eighteen others. These two men were later delegates to the constitutional convention of 1820. This presentment was returned at Franklin on July 14, 1819.

[26] *Mo. Gaz.*, August 11, 1819; *Mo. Intell.*, August 27, 1819; *Jackson Herald*, August 20, 1819. The full text is given in all these newspapers.

[27] *Jackson Herald*, August 28, 1819; *St. Louis Enq.*, August 18, 1819.

the genius of '76, and the interposition of Divine Providence, to find means to protect their rights." [28]

The Washington county Grand Jury protested against the attempted restriction as being as "unwarrantable as it was unconstitutional, and tended not only to abridge them of their precious rights as freemen to act and judge for themselves, but also to deprive them, in direct violation of the constitution of the United States, as of the treaty of cession, of the free enjoyment of a species of property which they lawfully held under the Spanish government." [29]

Excluding the resolutions adopted and toasts drunk at public meetings, and the presentments made by grand juries, the most valuable information preserved today that shows the sentiment in Missouri during 1819 and 1820 over the action of Congress and the question of slavery, is the editorials in the newspapers of that territory. Great as is the power of the press today, it is doubtful if there are three papers in Missouri who exert so great an influence on so large a proportion of this State's population as did the *Missouri Intelligencer*, *Missouri Gazette*, and *St. Louis Enquirer* during the years 1819 and 1820. This was, we believe, largely due to the fact that they, together with the *Jackson Herald*, *Independent Patriot* and *St. Charles Missourian*, held possession of the field of journalism in Missouri. But it was also the result of the ability and honesty of the editors.[30] It should be remembered that the editorial

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[28] *Jackson Herald*, September 4, 1819; *St. Louis Enq.*, August 25, 1819. The foreman of this Grand Jury was James Talbott, later a delegate from this county to the constitutional convention of 1820.

[29] *St. Louis Enq.*, August 4, 1819; *Mo., Gaz.*, August 4, 1819; *Jackson Herald*, August 20, 1819; *Mo. Intell.*, August 20, 1819.

[30] Joseph Charless, editor of the *Gazette*, was the pioneer of the Missouri press, having established and edited successfully the first newspaper printed west of the Mississippi River. After changes in name it today is issued as the *St. Louis Republic*. Charless was not only an able and honest editor but a fearless one as well; his high idealism on the slavery question during the years 1819 and the first part of 1820 shows his remarkable independence. His farewell letter to his patrons (*Missouri Gazette*, September 13, 1820) is his own spirit translated into words.

Thomas Hart Benton was one of the editors of the *Enquirer*, and his democratic nobility and resourcefullness has rarely been equalled. No statesman of any land ever followed his own lights more unswerveingly and tried harder to perfect those lights than Benton. No other statesman in Missouri history and perhaps in the history of this Nation, excepting Washington, ever had a more

then held a more important and a more prominent place in the paper than it does today. At least it occupied more relative space and concentrated on fewer subjects.[31] Even at that early day jealousies existed between editors. The papers printed outside St. Louis were free from these, but the *Gazette* and the *Enquirer* were bitter rivals and pursued different editorial policies.[32] However, regarding the slavery restriction clause attempted to be imposed by Congress on Missouri, all the newspapers voiced their protests in the strongest terms. It was over the election of the delegates and the question of slavery itself that the *Gazette* wandered from the fold and maintained an attitude as brave and independent as was possible, considering the strength of its foes and the weakness of its position.

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absolute control over the voters of his constituency without being aided by some kind of a machine than Benton did. His integrity was never questioned, and few were daring enough to challenge his judgments in his presence.

Nathaniel Patton, one of the editors of the *Missouri Intelligencer*, was an able and sincere writer. His editorials are sound and their influence must have been great. He reached the western settlements of Missouri, and published the only paper in the Boone's Lick Country. His was the first paper published west of the Mississippi River outside the city of St. Louis. After several changes of place of publication and in name, it is today issued in Columbia, Missouri, as the *Columbia Herald-Statesman*.

Little is known regarding the ability and power of the editors of the *Jackson Herald* and *Independent Patriot*, and of the *St. Charles Missourian*. The *Jackson Herald* did not appear until the summer of 1819; the *St. Charles Missourian* appeared in the spring of 1820.

[31] The Missouri newspaper of 1819 and 1820 contained the following general subjects: foreign news, national news together with copies of speeches delivered in Congress, such State news as was of the most public nature, editorials, numerous articles by individuals, letters, a few literary articles (clipped), and advertisements. The sensational and the personal were omitted except duels. Births, marriages, and obituaries were stated in two or three lines and frequently in one line of small print. As the "boiler-plate" news was then unknown, the paper was "set up" at home.

[32] The *Gazette* opposed most of the leading politicians of St. Louis during 1819 and 1820 and was in turn opposed by them. It also opposed John Scott, Missouri's Territorial Delegate in Congress, and some of its criticisms of Scott appear rather "far-fetched" today. (*Cf. Mo. Gaz.*, March 10, 1819). Scott in his turn refused to make any communications to the Gazette. (*Cf. Mo. Gaz.*, January 15, 1819.) On the whole, Charless appears to have taken the unpopular side of the slavery question. He seems to have realized this, and hedged more and more during the summer of 1820.

The *Enquirer* warmly espoused and ably championed the popular side of slavery, and under the guidance of Benton never let pass an opportunity to score on its rival.

The rivalry between these two sheets finally degenerated to physical violence and Charless was assaulted on May 10, 1820, by Isaac N. Henry, one of the editors of the *Enquirer*. (*Mo. Gaz.*, May 17, 1820).

In the spring of 1819 the *Gazette* began its fiercest attacks on Congress. On April 7th, it said: "It has been reserved for the House of Representatives of the present Congress to commit the most gross and barefaced usurpation that has yet been committed. They have ingrafted on the bill for our admission into the Union a provision that 'the State Constitution shall prohibit the further introduction of slavery; . . . . . ' Bear in mind, fellow-citizens, that the question now before us is not whether slavery shall be permitted or prohibited in the future State of Missouri, but whether we will meanly abandon our rights and suffer any earthly power to dictate the terms of our Constitution." [33] Although opposing the attempted restriction of Congress, the *Gazette* fearlessly opened its columns to those writers in Missouri who differed from it on this point, even though by so doing it lost both influence and subscribers, and was bitterly criticised. In support of its position, it said: "On the subject of the Missouri state bill, we have always believed, and still believe, that it can be clearly proved by sound and logical argument, that the conditions attempted to be annexed, are unconstitutional; but although we believe this, we will never close our pages to a fair and liberal discussion of the subject. Our motto is 'Truth without Fear.' " [34] It was only natural that the *Enquirer* should take advantage of this attitude of Charless's especially since Benton was never known to have either sympathy or patience for an opponent. The *Gazette* replied to the *Enquirer* on June 16, 1819, as follows: "For ourselves we wish but one sentiment did prevail, which we conceive the correct one, viz.: that Congress have no constitutional right to impose the restrictions." [35] Although opposing a slavery restriction on Missouri by Congressional

[33] Scharf, *op. cit.*, I. 561.

[34] *Mo. Gaz.*, May 12, 1819.

[35] The *Gazette* was kept busy at this time in denying its approval of restricting slavery, and was even charged with emancipation sympathies. In 1820 it openly came out in favor of slavery restriction and from his editorials Charless appears to have strongly opposed that institution. During 1819 he hid behind his motto "Truth without Fear," and let all writers have space and in answering an editorial challenge his subterfuge argument was his opposition to Congressional restriction, which he always managed to bring to the front as an answer to any charge of slavery heresy. *It is in the Gazette only that one meets with anti-slavery and slavery restriction articles.*

action, the *Gazette* did favor some kind of a slavery restriction section being incorporated in the proposed state constitution, and came out openly during the spring of 1820 in favor of those candidates for delegates whose views on this subject coincided with its position.[36] On May 3, 1820, the last day of the election of delegates the *Gazette* contained this daring editorial together with a list of the candidates and their position on the slavery question: "Fellow Citizens, Today is the last opportunity that is left to you to give your voice in forming a State Constitution. You are now called upon for the last time to say whether aristocracy and tyranny shall prevail—whether a few nabobs selected by a secret caucus shall be forced upon you as proper persons to form a constitution for your government, or whether you will exercise the proper persons to frame your mode of government. You are now called upon for the last time to declare whether yourselves, and your children, to the latest generations, *will be cursed with slavery*,[37] the evil and injustice of which is acknowledged by every one; or whether you will elect men who will take measures gradually to extinguish the evil, without interfering with the existing rights of property, or injuring the growth of the country. We entreat all those who have not yet voted to assert the dearest right of freemen. No question can be so important. Lose the present opportunity and no other will ever arrive. Your destiny is fixed by the result of this day's vote," etc. etc. As final evidence of Charless's position on these two subjects, is the following extract from his farewell letter of September 13, 1820, to his "Patrons" on his retirement from the editorship of the *Gazette*: "It has been said that the Gazette advocated the restriction of Missouri by Congress. The base fabricator of this charge is defied to prove it. Examine the files and they will be found to pursue one uniform course. Open to all communications, the editor has never hesitated to state his opposition to the interference of Congress, but still felt desirous that some limitation should be put *by the People*, to the importation of slaves.[38]

[36] *Cf. Mo. Gaz.*, May 3, 1820.
[37] Our italics.
[38] *Mo. Gaz.*, September 13, 1820.

In striking contrast to the few editorials which appeared in the *Gazette* in 1819 opposing Congressional restriction of slavery in Missouri, are the great number found in the *Enquirer*. On March 31, 1819, the latter paper declared that Congress would never impose the restriction on Missouri, but if it had "the people of the United States would have witnessed a specimen of Missouri feeling in the indignant contempt with which they would have trampled the odious restriction under their feet, and proceeded to the formation of a Republican Constitution in the fulness of the peoples power" etc.[39] When the various public meetings protested and the grand juries of Missouri returned presentments during 1819 against the action of Congress, the *Enquirer* contained many editorials commending the action of these bodies.[40] The *Enquirer* affirmed that, although there might be many in St. Charles county who opposed slavery on principle, "no *citizen is known* in St. Louis who will support" the statement that the citizens in the latter place were "divided in their opinion about the constitutional powers of Congress to prohibit slavery among" them.[41] That paper strongly attacked the *Gazette* for its position, and especially the slavery restriction and anti-slavery articles, written by individuals, which were printed in the rival sheet.[42] On July 21, 1819, the *Enquirer* was aroused over hearing that private petitions praying the next Congress to abolish slavery in Missouri were being circulated

[39] *St. Louis Enq.*, March 31, 1819. On April 21, 1819, in an editorial the *Enquirer* said it had discovered that "A St. Charles Farmer" who had been writing slavery restriction articles in the *Gazette* lived in St. Louis and thought that his writings would probably circulate in New England papers as evidence of the sentiment in Missouri.

[40] *St. Louis Enq.*, May 5, 12, 19, July 14, Aug. 18, 1819.

[41] *St. Louis Enq.*, June 9, 1819. Following is a copy of the entire editorial:

"Missouri Slave Question.—The Editors of the National Intelligencer believe that the citizens of this place are divided in their opinion about the constitutional powers of Congress to prohibit slavery among us. They were naturally led into that belief by the face of the public papers. It was a consequence spoken of by the citizens of this place, as the certain effect of publications made in a paper in this town. Yet what is the fact? Are we divided in opinion upon that point? We confidently affirm that no *citizen* is known in St. Louis who will support the affirmative of the question. As to the publications they are the work of men newly arrived, who would not be qualified, either by residence or the payment of a tax to vote, in an election, and who with all their impudence have shame enough to endeavor to conceal their names, to avoid the public contempt."

[42] *St. Louis Enquirer*, June 23, 1819.

by non-slaveholders and that these petitions were being swollen by the signatures of "boys and striplings." And the editor of the *Enquirer* protested vehemently against an Edwardsville (Illinois) newspaper stirring up the Missouri slavery question, and said that this was purely a domestic concern of Missouri, that actual slavery existed in Illinois, and that the citizens of the two states should not be thus "set against each other." [43] The attitude of the *Enquirer* was one of absolute opposition to Congressional action in restricting slavery in Missouri, and when the election of delegates took place in 1820, it favored those who opposed any restriction of slavery in the new State.

The *Jackson Herald* contained no editorials of special value on this point, but its attitude was also one of opposition to any slavery restriction being applied in Missouri whether imposed by Congress or by the convention. This paper was not a very strong sheet in its editorials. It tried to maintain a fair and independent attitude on most questions that arose, especially on the rivalry between the *St. Louis Gazette* and the *Enquirer* and in the bitter fights over public men and their acts.[44]

The *Missouri Intelligencer* bitterly opposed the action of Congress in attempting to impose a slavery restriction on Missouri and said: "This subject appears to have excited a general burst of indignation from the people of this territory. It is a question in which Congress have no right to interfere, and to which we as the people will never submit. The restriction attempted to be imposed upon us by the *seventy-eight members* of the *House of Representatives* who voted for it, were those exclusively from the *eastern states*.. They view with a jealous eye the march of power westward, and are well aware the preponderance will soon be against them; therefore they have combined

[43] "Private Petitions—For a long time we have been informed that private petitions were carried about in several parts of the territory praying the next congress to abolish slavery in the Missouri territory. They are said to be circulated chiefly by persons who own no slaves themselves, and who are very willing to appear generous at the expense of others. In promoting their object, and to multiply signatures, it is said that boys and striplings are got to put down their names, without the addition of their ages; and by such contrivances as these the authentic expression of public sentiment in this territory by Grand Juries, Public Meetings, Toasts of Public companies &c. is to be invalidated and overborne in the next congress." (*St. Louis Enq.*, July 21, 1819.)

[44] *Jackson Herald*, February 26, 1820.

against us; but let them pause before they proceed further, or the grave they are preparing for us, may be their own sepulchre." [45] On January 28, 1820, it said: "The most extraordinary and unprincipled means are [being used] using by the eastern people to prevent the citizens of this territory from enjoying equal privileges with those of other states." It further said that the proposed compromise of certain members of Congress to separate by a line running west the slave and free territory west of the Mississippi river "evinces that humanity is not the sole object of those who brought forward the restriction." [46] This newspaper not only opposed slavery restriction in Missouri by Congress but set forth those articles defending slavery in Missouri which had appeared in other newspapers. One article in particular taken from a Philadelphia paper and which the *Missouri Intelligencer* called "a very able and ingenius article—on the Missouri Question" strove to prove the following propositions: (1) that "the holding of slaves is defencible by the law of nature;" (2) that "slavery is so by the law of God;" (3) that "slavery is so by the municipal laws of the great majority of the civilized nations, ancient and modern;" (4) that "slaves are property;" (5) that "negroes have no right to object to negro slavery;" (6) that "Congress has not the *right* to prohibit slavery in the Missouri territory; (7) that "under present circumstances it is not *expedient* to prohibit it." [47] The *Missouri Intelligencer* from its first issue in April, 1819, to the spring of 1820, was almost entirely taken up with the "Missouri Question," and not only contained individual articles and editorials but copies of the speeches reported in Congress.[48] On April 15, 1820, it printed in full the

[45] *Mo. Intell.*, (editorial) May 9, 1819. It proceeds as follows: "As well might they arrest the course of the ocean that washes their barren shores, as to check our future growth. Emigration will continue with a giant [*sic*] stride until the wilderness shall be a wilderness no more; but in its stead will arise flourishing towns, cultivated farms, & peace, plenty and happiness smile on the land. Let those who are raised by the voice of the people to watch over and protect their rights and liberties, beware how they abuse so sacred a trust, lest they find in every injured freeman the spirit of a Hampden rise and hurl them from their posts."

[46] *Ibid.*, (editorial) January 28, 1820.

[47] *Mo. Intell.*, Feb. 18, 1820. The article was written by one who said he was "*no friend to slavery.*" (Our italics.)

[48] *Cf. Mo. Intell.*, May 7, 1819; March 4, 11, 18, 25, 1820.

Enabling Act passed by Congress, and remarked in its editorial column: "The names of those who voted in favor of the rights of Missouri should be handed down to posterity as examples to future legislators . . . . . By their firmness, independence and patriotism, we have been rescued from degradation, and the constitution from violation."

The most extensive though perhaps the least valuable source of information showing the sentiment in Missouri over the slavery restriction attempted by Congress and incidentally over slavery itself is the various articles written over *noms de guerre*, which appeared in the Missouri newspapers of that day. These articles are so numerous that only the briefest summary of them is possible. It is hardly an exaggeration to state that few issues were run off the press from April 1819 to April 1820 which did not contain remarks on the "Missouri Question." These articles covered the entire field of this question both *pro* and *con*, and some took up the discussion of slavery as an institution *in se* and also with regard to its application in Missouri. They naturally divide themselves into two general groups: those favoring, and those opposing the attempt of Congress to impose a slavery restriction on Missouri.

The pro-Congress articles appeared in only one newspaper in Missouri Territory, the *Missouri Gazette*, and logically were anti-slavery in tone and argument. If all the *noms de guerre* under these articles represented different writers, then the total number of pro-Congress Missouri authors was only six![49] Some

[49] The most pronounced and ablest of these was one who signed himself "A Farmer of St. Charles County." His communications appeared in the *Missouri Gazette* on the following dates: April 7, 21, May 5, 19, June 9, 30, 1819. This author wrote a series of five letters advocating restriction of slavery either by Congress or by Missouri, and also several replies to criticisms of his articles. He declared that the people in his neighborhood were opposed to the further introduction of slavery in Missouri, and said that slavery was admitted to be an evil and a curse even by its advocates. He considered that this curse would be strengthened if allowed to spread and said that if Congress did not restrict it in Missouri then "we will try to do it ourselves." As regards the constitutional right of Congress to do this he continued: "Let none imagine that I believe Congress does not possess the constitutional right to prohibit the introduction of slavery. I have no doubts on the subject. If slavery is anti-republican, (and who but a madman will deny that it is?) Congress have the right to refuse their sanction to any constitution that tolerates it." (*Mo. Gaz.*, May 5, 1819. 3d Letter dated April 24, 1819.) In his fourth letter (*Mo. Gaz.*, May 19, 1819, letter dated May 1, 1819) the "Lawyer junto" of St. Louis is first mentioned.

of these writers lay stress on the evils of slavery as an institution and the need of restricting it either by Congressional or local action;[50] others, while recognizing the evils of slavery and while favoring either emancipation or restriction, emphasized the desirability and the good policy of waiting patiently for Congress to act, and defended that body as acting for the general welfare of the country.[51]

Although all pro-Congress articles were logically pro-restriction and anti-slavery, there were a few anti-Congress writers who also were opposed to slavery and favored restricting it. The number of writers that took these latter positions is, however, almost negligible.[52] The circular of John Scott, Missouri's Territorial Delegate, to the people of Missouri does not properly belong to this class of writings since while deprecating slavery it still stated that a restriction of it would be

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This body, composed of the leading lawyers of St. Louis, favored slavery and wielded an almost invincible strength during this period. It was bitterly opposed by the *Gazette* and was frequently referred to as the "lawyer junto."

[50] *Cf.* Note 49. See also in the *Missouri Gazette*, May 26, 1819, an article by "An American," which is a strong emancipation piece. A very sarcastic article written by "A Republican Slavedriver" on the excessive use of grand jury presentments and the beneficent character of slavery appeared in the *Gazette*, Sept. 18, 1819. A restrictionist article by "A Republican of the Jeffersonian School" appeared in the *Gazette* Feb. 23, 1820.

[51] A series of four articles by "Pacificus" appeared in the *Gazette*, May 12, 19, 26 and June 2, 1819, along this line, and, while favoring the Talmadge amendment and either the abolition or restriction of slavery, these articles urged Missouri to patiently wait for Congressional action. A similar article by "Cato" appeared in the *Gazette*, June 16, 1819, which, while favoring emancipation, thought there was little to be feared of Congress not leaving this in the hands of Missouri. This latter article is not a real pro-Congress argument although the writer would hardly have grieved or criticised if Congress had fastened a slavery restriction on Missouri.

[52] A writer under the *nom-de-guerre* of "One of the People," whose articles appeared in the *St. Louis Enquirer*, April 4, 1819, said: "I do not think slavery justifiable or beneficial; but it is for ourselves, and not for Congress to decide that question;" etc. Another writer under the *nom-de-guerre* of "A Citizen of Missouri" said: "I shall attempt, Mr. Editor, to convince those who read these remarks, that the proposed resolutions were unconstitutional; that, although slavery is anti-republican and unbecoming a great nation of freemen, still that it is allowed by the Constitution of the United States, and being so, that Congress have no right to determine about it." (*Mo. Gaz.*, April 28, 1819; *cf.* Also *Mo. Gaz.*, March 24, 1819).

The above articles, together with the one written by "A Citizen of Missouri," which appeared in the *Enquirer* July 21, 1819, were the most able on this phase of the question and were almost in a class to themselves.

"unfriendly to the slaves themselves to confine them to the south." [53]

The mass of articles written in 1819 and 1820 in Missouri by those who protested against Congressional restriction of slavery would fill a volume. These articles, however, either refrained from a discussion of slavery or advanced arguments for its unrestricted continuance.[54] There were some that dealt in such generalities as the "evil" or "curse of slavery" and then proceeded to show how the mitigation of this "curse" would be accomplished by leaving slavery *unrestricted in Missouri.* These latter articles were simply counterparts of some of the speeches delivered in Congress by many of the Representatives from even the southern states, and indicate nothing except that slavery in 1819 and 1820 was generally regarded on both sides of the Mason and Dixon line as an evil. The north wanted this evil abolished or at least lessened by restricting the new slave territory; the south desired or pretended to desire to mitigate it by extending slave territory. For one merely to have

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[53] *Mo. Intell.*, July 16, 1819. Following is an extract from this circular of Scott's:

"I regret as much as any person can do the existence of slavery in the United States; I think it wrong in itself, nor on principle would I be understood as advocating it; but I trust I shall always be the advocate of the people's right to decide on this question, as on all others, for themselves, leaving to their own wisdom and forecast the adoption of such a Constitution, and the enaction of such laws as they shall consider best comforts with their prosperity and happiness. I consider it, not only unfriendly to the slaves themselves to confine them to the south, but wholly incompetent for Congress to interfere upon the subject, being a piece of domestic policy which the state of Missouri has a clear right to decide for herself, as every other state in the Union has done."

[54] A few of the articles of this nature appeared over the following *noms-de-guerre* in the *Missouri Gazette* April 7, 1819, "Hampden;" April 14th "Sydney"; April 21, "Hampden," "Gracchus," "A Missourian;" April 28th, "Hampden;" May 5th, "Hampden;" May 12th, "Sydney;" June 16th, "Hampden;" June 30th, "C." Many others were also printed taking a position of disapproval of Congressional restriction; these either advocated slavery without any restriction whatever or were silent on that question.

In the *St. Louis Enquirer* many similar articles appeared of which two were over the following *noms-de-guerre*: May 19, 1819, "A St. Louis Mechanic;" June 16th, "A Citizen of St. Louis," etc. etc.

And, in the Missouri *Intelligencer* some of the articles appeared over the following *noms-de-guerre*: April 30, 1819, "Epaminondas," "A Farmer;" May 7th, "Epaminondas;" May 21st, "Epaminondas;" May 28th, "Atahualpa;" July 21st, "Epaminondas;" July 30th, "A Spectator;" December 3d, "Cato;" January 21, 1820, "Cato;" February 1st, "Cato;" February 18th, "A Citizen."

stated in 1819 or 1820 that he regarded slavery as an evil, is of little consequence in itself.

This concludes our detailed examination of those five original sources of historical information that reveal the sentiment in Missouri from April 1819 to April 1820 on the question of the restriction of slavery as attempted by Congress. The main question under consideration here has been the attitude of the inhabitants of Missouri Territory over the attempted restriction of slavery by Congress, but there has also been brought to light, as incidental to the main issue, the great, if not more important, question of slavery itself. As has been stated, the next chapter deals with the slavery proposition, and it was only to prevent a duplication in the use of source material that slavery was permitted to creep into this one. It must be emphasized, however, that during 1819 slavery became an issue in Missouri and that it was a real if not a greater *casus belli* of the inhabitants of this territory in their opposition to Congressional restriction, the apparent declarations, based on constitutional grounds, of some prominent men and public meetings to the contrary notwithstanding.[55]

The inhabitants of Missouri in 1819 appear to have been almost a unit in their opposition to any restriction being imposed by Congress on slavery in their proposed state.[56] Only one minor public gathering and perhaps six *nom-de-guerre* writers favored Congressional restriction.[57] An examination of the

[55] The editor of *Niles' Register* seems to have appreciated this point. On October 2, 1819, (*Niles' Register* XVII, 71.) he said in part: "If the people of Missouri are contending for the abstract question, as to their *right* to admit slavery, if they please, there is no one, we presume, that would refuse to listen patiently to a discussion of the merits of the question; but if they are thus operated upon from a *desire to hold slaves*; to extend this cursed blot on our country over the immense regions west of the Mississippi; and give an almost boundless expanse to the anti-republican principles which belong to it, and thereby render more and more difficult any plan which a more enlightened posterity may devise to obliterate this stain on the nation—it is impossible that any humane man can wish success to their efforts," etc. etc.

[56] The foregoing statement is based on the source material already examined. *Cf.*, Perkins and Peck, *Annals of the West*, 769, second ed., 1850.

[57] The only public meeting in Missouri in 1819 that adopted resolutions favoring Congressional restriction was held in St. Ferdinand *township*, St. Louis county, on June 5th. Although this meeting was strongly pro-Congress in sentiment, it is important to notice that just one month later at a Fourth of July celebration held in the same township, all the toasts drunk were anti-Congress in

resolutions adopted at public meetings, toasts drunk at public dinners and celebrations, presentments of Grand Juries, editorials, and scores of articles written over *noms-de-guerre* shows conclusively that Missouri was overwhelmingly opposed to any Congressional restriction of slavery.[58] The chief arguments advanced for this position were based: (1) on the United States Constitution; (2) on the treaty of cession; (3) on the grounds of policy and interest; and (4) on the dictates of humanity and the welfare of the slave.

Practically all anti-Congress literature in Missouri set forth the constitutional reason. This argument was advanced in two ways, either of which could be stated without taking up a discussion of slavery. First it was urged that the Constitution gave Congress the power to admit a State into the Union but did not give that body the power to impose any restriction on a state, except that its government should be republican in character, and since in their eyes slavery was not an anti-republican institution, having existed before and after the formation of the nation, it did not fall within the constitutional restriction. Secondly, it was declared that Congress was a body of delegated powers, and since the constitution had not given Congress the authority to regulate slavery in a state, that power was entirely within the sphere of state action and was subject to the "*internal*" or "*municipal*" control of the State. The argument based on the treaty of cession was also advanced in practically all of the Missouri anti-Congress literature of 1819. It declared that since in the treaty of cession the United States had guaranteed to protect the property of the citizens of the Louisiana Purchase, therefore Congress could not place a restriction on slavery in Missouri, because slaves had been held as property in

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language. Either there was a change in sentiment, or, what is more probable, the first meeting did not represent the wishes of the inhabitants of even that township.

The smaller Fourth of July gathering at Lucas' Spring in St. Louis was not strictly pro-Congress in sentiment but rather had confidence in a final happy solution of the Missouri question by the national legislature.

[58] It is of interest to notice the following which appeared in *Niles' Register*, October 2, 1819 (XVII. 72.): "The grand juries and other public bodies of the territory of Missouri, are loud in denunciations of the proceedings had at the last session of Congress, concerning the admission of slavery into the proposed State."

Louisiana prior to and after 1803. The third and fourth set of arguments involved a discussion of slavery, and we will consider them in their proper place. The large mass of anti-Congress literature did not, however, contain reasons which brought forward or made prominent the slavery question itself. In fact many of the anti-Congress articles expressly stated that the question under consideration in no way involved the discussion of slavery but was one which rested entirely on a legal basis.

The sentiment in Missouri in 1819 regarding slavery, as revealed in the various sources of historical information already examined, is not so clearly defined. As a general proposition it may be stated that throughout the territory slavery as an institution was deprecated and was regarded as a great evil, even as a curse. This attitude of the inhabitants of Missouri towards the institution did not, as one might logically conclude, carry with it a desire for either emancipation or restriction. It was a position that was reflected in many of the speeches of even the southern members of Congress, who at the same time strove hard to prevent restrictions being placed on slavery. They were willing, in most cases, to waive the moral issue since the ark of the Constitution was deemed strong enough to repel any attack along this line. History and law favored slavery; these combined with the political and economic strength of that institution were so powerful as to overcome the moral opposition to it. Although constitutional and economic arguments favoring the restriction of slavery were advanced both in and out of Congress, the stronghold of the restrictionists rested on a moral foundation. On the other hand, there were some advocates of slavery who also used the moral argument as well as the constitutional and historical, but there were few.

In Missouri in 1819 the six anonymous writers and the single public meeting that favored the attempted slavery restriction of Congress, were opposed to slavery. There were also three or four *nom-de-guerre* writers who while opposing Congressional restriction also opposed slavery and favored State restriction. Including several editorials in the *Missouri*

Gazette, these few articles are the total amount of anti-slavery literature that appeared in Missouri Territory in 1819.[59]

On the other hand there were a number of articles and resolutions that deprecated the existence of slavery, regarded it as a curse and as an evil, and some even professed to favor a national emancipation, while at the same time these same articles *opposed any restriction being placed on slavery in Missouri*, whether by Congress or by the state. The arguments used were based on policy and interest, and on the grounds of humanity and the general welfare of the slaves. These arguments were especially directed against Congressional restriction but are of equal force as indicating the general anti-restriction position of the authors advancing them. The general method of reasoning was: first, that restriction of slavery would tend to stop southern immigration into Missouri if not put an end to it altogether; would perhaps produce greater evils than already existed as restriction approached emancipation; and would be an unjust interference with established property rights, and a direct injustice to those who had immigrated with their slaves to Missouri thinking slavery would be unrestricted here: second, that restriction of slavery in Missouri if enforced would work an injustice to the slaves by keeping them in the crowded slave

[59] Ferdinand Ernst, a German, in his "*Travels in Illinois in 1819*" came to St. Louis on July 27th, and in a letter dated July 30th, Edwardsville, Illinois, wrote, however, as follows: "This city is the seat of the territorial government of the Missouri territory. The motion to be advanced to a state and to have its own constitution met with difficulties in Congress, since Congress wished to impose the condition that slavery should be abolished in the state of Missouri. Now one finds most every day in the newspapers paragraphs concerning this subject, the majority of which are almost always zealously opposed to the introduction of slavery in the state of Missouri. Everywhere much is being written now concerning the possibility of getting rid of slavery as an acknowledged evil in the entire compass of the free states, so that people in general actually entertain the hope of seeing even the southern states soon freed from this plague." (*Illinois State Historical Library Publications* No. 8, pp. 153-154.) The letter from which the foregoing extract was taken is dated "Edwardsville, July 30, 1820." There was either a mistake made by the writer as regards the year or a typographical error in this respect, since it is the only letter dated 1820 and undoubtedly should have been 1819.

The explanation of Ernst's statement, which is contrary to the actual facts, may be that he was influenced by the anti-slavery articles in the *Edwardsville* (Illinois) *Spectator*: certainly his visits in Missouri Territory was too short for him to have gained any reliable information relating to the subject he commented on.

districts of the south, where their condition was worse and their hardships greater than farther north, and would not lessen the number of slaves but only diminish slave territory; and if not enforced, it would result in as little permanent good as it had in Illinois.

It may be definitely stated that during 1819, *i. e.*, after the adjournment of Congress in that year, the sentiment in Missouri on the question of statehood, Congressional restriction of slavery, and slavery as an institution, expressed itself in a united stand of protest against the failure of Congress to admit Missouri; in a practically united front of opposition, based mainly on constitutional grounds, to any Congressional restriction of slavery in Missouri; in a more or less general condemnation of slavery in the abstract, wherever that institution was mentioned, and a politic course of comparative silence regarding its restriction by Missouri.

There are several subjects in this connection that could have been discussed with much interest, but as they rest so entirely on an academic basis their historical value would be of small enduring worth. For example, to what extent was Missouri's opposition in 1819 to Congressional restriction due to the efforts of her leading men and slave owners? Or, to what extent did the sentiment of Missourians on Congressional restriction force her leaders to declare against it? Was Missouri's condemnation of slavery in the abstract a declaration of policy in order to propitiate certain northern Congressmen, or was it an expression based on conviction? Would Missouri have framed a constitution and set in working a state government, as Benton and others threatened, if Congress had not passed an enabling act in 1820? How much did the Spanish land claim policy of the United States Congress influence the inhabitants of Missouri in their opposition to that body? Data regarding some of these queries have already been set forth: new facts will be found in the next chapter.

CHAPTER IV.

POPULAR OPINION IN MISSOURI IN 1820.

ELECTION OF DELEGATES.

The news of the passage of the Missouri Enabling Act spread quickly over the country; Thomas Hemstead was the messenger to Missouri. He reached Jackson, Missouri, on his way to St. Louis on March 21st.[1] He was received in St. Louis with great rejoicing. The citizens of that town expressed much satisfaction on receipt of the good news. A local chronicler wrote: "The town was generally and splendidly illuminated; several transparencies were displayed. Among others a very handsome one displaying the American Eagle surmounting the Irish Harp. We were diverted by another, representing a slave in great spirits, rejoicing at the permission granted by Congress to bring slaves into so fine a country as Missouri."[2] By April 1st the pioneers of the vast Boone's Lick country on the frontier read with joy this item in the *Missouri Intelligencer:* "Pleasing Intelligence—We have the pleasure of laying before our readers the gratifying intelligence that the Bill for the admission of Missouri into the Union UNRESTRICTED, *has passed both houses of Congress*," etc.

The celebration over the passage of the Enabling Act had hardly ended in Missouri before the question of electing delegates to a constitutional convention became the important topic of discussion. This question made prominent the same problem that had convulsed Washington, D. C., for two years—the problem of the restriction or the non-restriction of slavery in Missouri. "It appeared that the political storm had not spent its fury, and had passed from the last to rage with violence nearer the western horizon."[3] There was, however, this difference between these two political storms: the national struggle was between forces of equal strength; the local struggle

[1] Houck, *Hist. Mo.*, III. 248.
[2] *Mo. Gaz.*, Apr. 5, 1820.
[3] Edwards, *Great West*, 322.

was between a small group of able, determined, conscientious men on the one hand and the overwhelming majority of the people on the other hand. The local struggle never meant more than a fight for principles against overwhelming odds. The press of the State with but one exception, the bench and bar of Missouri with only several notable exceptions, the wealth and social position of Missouri's leaders, and the great mass of Missourians themselves stood together for an unrestricted, unlimited system of slavery in the new state. Few and none of prominence, had the temerity to publicly favor abolition. The division in Missouri was between the few hundreds of voters who favored a constitutional limitation upon the immigration of slaves into Missouri after a period of years, and the thousands who would not permit any tampering with slavery. The one sought merely slavery restriction: the other slavery free and unrestricted. The former dreamed of a day when slavery would die: the latter stood for the perpetuation of slavery. The fight was on between restrictionists and anti-restrictionists.

In such a fight the advantage of numbers and wealth was all on the side of the pro-slavery men. From the time of the American occupation of the Northwest Territory much of the immigration to Upper Louisiana had been prompted by a desire to escape such slavery restrictions as were imposed in the Northwest Ordinance.[4] The settlers in Missouri during the territorial period had come principally from the five slave states of Virginia, Kentucky, North Carolina, South Carolina and Tennessee. From the spring of 1819 to the spring of 1820 a constant stream of these southern immigrants with their slaves and flocks poured into Missouri. Such an influx of population had never before been seen in this district. All the Missouri writers of that day were impressed with its magnitude and all agreed in their accounts regarding the southern character of the new settlers.[5] The South was sending forth its most ener-

[4] Dunn, *Slavery Petitions and Papers*, in *Ind. Hist. Soc. Pub.*, II. No. 12, pp. 13ff.

[5] *Mo. Gaz.*, June 9, Oct. 20, 1819, Jan. 26, 1820; *Niles' Register*, XVII. 288 (Dec. 25, 1819); Flint, *Recollections*, p. 201.

getic and virile families into the rich bottom lands of Missouri. While Congress was debating slavery in Missouri, the South was settling it with her sons.

This incoming of southern settlers during the late territorial period had definitely established slavery as an institution in Missouri.[6] Slavery had existed in upper Louisiana for decades and had been an object of solicitude as early as 1805, but it was not until the Americans from the south brought in their thousands of negroes that its economic position was securely founded. In 1810 the slave population of the Territory had been only 3,011, in 1820 this had increased to 10,222.[7] As there were only 14,767 white males over eighteen years of age in Missouri in 1820, it is evident that there was probably a sufficient number of slaves in Missouri to have allowed at least one to every male property owner.[8] These figures show the strength of slavery in Missouri in 1820, the character of the inhabitants of the State served to buttress this strength. Slavery was an important factor in the economic life of Missourians at this time. Much wealth was locked up in slaves and much wealth was being produced by slaves. Criticism of slavery as a poor economic system in Missouri is not found in any of the source material of that day. We are driven to the conclusion that from an economic point of view alone, slavery in Missouri in 1820 was regarded as indispensible to the life of the State.[9]

The campaign preceding the election of delegates to a constitutional convention and the election itself pictured clearly public opinion in Missouri in 1820 on this question of slavery and on other important issues. For only seven counties

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[6] Trexler, *Slavery in Mo.*, 1804-1865, in Johns Hopkins Univ. *Hist. Studies*, XXXII. No. 2, pp. 105ff.

[7] *U. S. Census, Statistical View and Schedule*, 1790-1830, pp. 23, 27.

[8] *Ibid.*, p. 23. Our data is insufficient for us to determine the extent of slave holdings in Missouri in 1820.

[9] Houck, *op. cit.*, III. 250. The view taken by Mr. Houck is that had no attempt been made by Congress "to prohibit slavery" in Missouri, "slavery would have been excluded from the new state." Prof. Trexler, who made an extended study of this question takes the view that slavery was economically profitable in Missouri in 1820, that the people of the State favored slavery in itself, and that Congressional action was only the occasion of the outbreak of anti-restriction literature that issued from Missouri. *Cf.*, Trexler, *op. cit.*, pp. 100ff.

is pre-election data obtainable on these points, but in these counties lived nearly two-thirds of the population of Missouri. They include the counties of Howard, Cooper, Lincoln, Washington, Cape Girardeau, Jefferson and St. Louis.[10]

In Howard and Cooper counties public opinion was overwhelmingly pro-slavery and anti-restrictionistic. Of the twenty candidates who offered themselves for election in Howard county, not one publicly favored slavery restriction; and of the five delegates elected, four stated their advocacy of slavery and of the immigration of slaves—the other delegate, a slave owner, having put forth no argument for his election except his name.[11] The candidates in Cooper county made no public declaration of principles that appeared in the press. Two of the three elected were, however, slave-owners and all were natives of either Virginia or Kentucky.[12]

The Boone's Lick people appeared to have been less concerned about slavery restriction than the historians of a century later. Apparently no restrictionist would have stood a chance of election there and would probably have fared poorly to have openly declared himself. These western pioneers were of one mind on slavery and never feared that Missourians would interfere with that institution. Other questions were, however, matters for public discussion. They regarded a correct apportionment of delegates and representatives, the central location of the seat of government, white male suffrage, the elective principle as applied to the executive and legislative departments, a sound and independent judiciary, public education, the absence of property qualifications for voters, conservative banking laws, and a bill of rights, as being important questions on which the convention might decide adversely.

[10] The combined white and colored population of these counties was 42,669: the total population of the State was 66,586. *Cf.*, *U. S. Census*, Schedule p. 23.

[11] See files of the *Mo. Intell.*, for April and May, 1820. The four delegates were Green, Reeves, Burckhartt and Findlay; the one was Ray, a native of Kentucky and a slave-owner.

[12] Lillard and Wallace were slave-owners, the one a native of Virginia, the other of Kentucky. The third delegate, Clark, was a native of Virginia.

The Mo. Intell., May 13, 1820, states that there were eight candidates in Cooper county: the *Hist. of Cooper Co.*, p. 75, gives a list of twelve candidates with the vote recorded for each.

These were the questions that were discussed with much vigor in the *Missouri Intelligencer* preceding the election. These were the vitally important questions regarding which doubt was entertained of their final issue in the new constitution to be framed. Slavery was regarded as a practically settled question on which there was a unanimity of opinion, but an easternly situated state capitol or a restricted suffrage was an actual possibility and the Howard and Cooper county people wanted delegates they could trust when such questions were before the convention.

In Lincoln county only four candidates appeared. Two of these favored restricting the period of slavery immigration fearing lest Missouri deal in slaves as articles of commerce; the third stated that he favored slavery; and the fourth, Henry—who was elected—made no statement that appeared in the newspapers.[13] Henry was a large slave-owner and his election is sufficient proof of the slavery sentiment in Lincoln county.

In Washington county public opinion on slavery is significantly revealed in the vote that was cast on election day. The votes cast were four hundred and fifty-three. If each voter voted for three delegates—the number allotted Washington county—there would have been a total of one thousand three hundred and fifty-nine delegate votes. At Mine a Burton there were one thousand two hundred and eight delegate votes cast, and of these only sixty-one were for restrictionists.[14] Further, all three delegates elected were slave-owners.

In Cape Girardeau county thirteen candidates were before the voters. Only one, George H. Scripps, was an avowed restrictionist.[15] The others who stated their position on this question were all strong pro-slavery men and non-restrictionists.[16] The five delegates elected were anti-restrictionists, pro-slavery men and had all publicly stated their position. The lowest vote received by any of these five was more than twice as high as that cast for Scripps, the restrictionist; and

[13] *Mo. Gaz.*, Apr. 12, 19, 26, 1820.
[14] *St. L. Enq.*, May 10, 1820; Scharf. I. 563.
[15] *Jackson* (Mo.) *Herald*, Apr. 22, 1820.
[16] *Ibid.*, April 8, 15, 22, 29, 1820.

four candidates not elected also received higher votes than Scripps.[17] This shows the preponderating anti-restriction public opinion in Cape Girardeau county. The Rev. Timothy Flint, who resided in Jackson, Missouri, from December, 1819, to the spring of 1820, said in this connection: "The slave question was discussed with a great deal of asperity, and no person from the northern states, unless his sentiments were unequivocally expressed, had any hopes of being elected to the convention, that formed the constitution." [18] Four of the five delegates elected were natives of slave states; the other, a native of Ireland.

In Jefferson county the slavery question was the important one. A small but determined minority organized to elect a restrictionist delegate. A meeting of restrictionists was held at the house of John Geiger in Herculaneum on April 22nd and David Bryant presided and Benjamin Lundy was appointed secretary.[19] This meeting resolved that slavery was an evil and should be limited in Missouri; that it was inexpedient at that time to urge abolition; that a freehold suffrage qualification was anti-republican; and that ballot voting was a security against "the vapouring bullies of aristocracy from extorting from the timid and the weak, a soul-degrading acquiescence in their tyranical proscriptions." The meeting also passed a resolution recommending Abner Vansant as a candidate to the convention, and another naming a committee of five to draft an address to the electors. The committee reported an address, which had probably been previously prepared, which was ordered printed on handbills and distributed among the voters, and which was also ordered printed in the *Missouri Gazette.*

The address was a remarkably clear and concise argument in favor of slavery restriction in Missouri. Contrasts were

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[17] *Jackson (Mo.) Herald*, May 6, 13, 1820. Buckner received the smallest vote of the five delegates elected. He received two hundred and forty-one votes; Scripps, one hundred and twelve votes; Bollinger, Ellis, Ranney and Lewis, all pro-slavery men, received more votes than Scripps, altho they were not elected delegates.

[18] Flint's *Recollections*, p. 214. (Kirkpatrick).

[19] All information relating to Jefferson county was obtained from the *Mo. Gaz.*, April 26, 1820.

drawn between free and slave states, such noted statesmen as Clay and Jefferson were quoted with force, and an appeal was made to the inherent ideas of justice in the breasts of Americans. A saner, more temperate, and more forceful anti-slavery document is not met with in the early history of Missouri. Its author performed well his duty and it is to be regretted that his name will probably never be known.

Acting in accordance with the resolutions adopted at this meeting Abner Vansant made public statement of his sentiments on the questions considered and agreed to the fundamental acts of the restrictionist meeting. Despite the clear cut issues presented the voters in Jefferson county and despite, further, the appearance of two anti-restrictionist candidates, Samuel Hammond and John W. Honey, the restrictionists were defeated. Hammond, a wealthy land-owner and slave-holder, was elected to represent Jefferson county.

It was in St. Louis county, the second in both slave and free population in the Territory, that the most bitter and determined fight was waged between restrictionists and anti-restrictionists.[20] Not only were the restrictionists many times stronger in numbers in St. Louis county than in the other districts, but they were better organized, more ably led, and were alone in having the warm support of a local Missouri newspaper, the *Missouri Gazette*.[21] Adding bitterness to the campaign in St. Louis county were the intense personal enmity of the two local editors, Thomas H. Benton of the *Enquirer* and Joseph Charless of the *Gazette*, the rivalry of such opposing lawyers and politicians as Rufus Pettibone and Rufus Easton on the one hand and David Barton and Edward Bates on the other, and the blood feud between Thomas H. Benton, the duellist, and his victim's father, John B. C. Lucas. The struggle here was not only a fight over personalities but also

[20] Howard county, the most populous, had 11,319 whites, 2,089 slaves, and 18 free colored in 1820; St. Louis, 8,014 white, 1,810 slaves, and 196 free colored, besides 29 others free. *U. S. Census*, 1830, Schedule, p. 23.

[21] The *Mo. Intell.*, Franklin, Howard county; the *Missouri Herald*, Jackson Cape Girardeau county, and the *St. Louis Enq.*, were all pro-slavery and anti-restriction papers. The *Mo. Gaz.* alone championed restriction principles. The first issues of the *Missourian*, St. Charles, that were examined by us were dated after the election had taken place.

JOSEPH CHARLESS.
From Houck's *Hist. Mo.* III. 65.

THOMAS H. BENTON.
From Houck's *Hist. Mo.* III. 268.

EDWARD BATES.
From Houck's *Hist Mo.* III. 18.

ALEXANDER McNAIR.
From Houck's *Hist. Mo.* III. 253.

PIERRE CHOUTEAU, JR.
From Houck's *Hist. Mo.* III. 254.

WILLIAM G. PETTUS.
From Houck's *Hist. Mo.* III. 250.

SOME PROMINENT ST. LOUISANS IN 1820.

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over principles. Barton, Benton and some of their friends were not only attacked for being bachelors, for being debauched, and for forming a lawyer clique, but were also accused of being anti-restrictionists, and of being advocates of freehold suffrage and *viva voce* voting; Lucas was opposed not only because of his record as one of the board of commissioners of the United States for adjusting Spanish land claims and because of his personal enemies, but also because he was a restrictionist. Although this was not the first political campaign waged in St. Louis county or in the Territory, it was one of the most determined and bitter prior to the State election in August, 1820. The secret and the open caucus were in notice and the popular meeting of those days was also present. The issues were clearly drawn and the candidates definitely placed: the stake was the election of eight delegates, three more than any other Missouri county was apportioned, to Missouri's first constitutional convention. Such a stake was as fully appreciated at that time as it would be today. These eight delegates acting together would control with their own votes alone twenty per cent of the entire convention and would form thirty-eight and one-half per cent or nearly two-fifths of a majority. Such was the importance of the St. Louis county campaign and election.

The anti-restrictionist candidates were divided into one large group and two small ones. All three groups publicly held this in common that they opposed placing a constitutional restriction on the importation of slaves into Missouri. United in being anti-restrictionists they differed however on other points. The most important group of restrictionists was such by virtue of numbers, ability, organization and power. It originally consisted of thirteen candidates although only twelve publicly declared themselves.[22] These thirteen were David Barton, Edward Bates, Thomas H. Benton, Pierre Chouteau, Jr., G. W. Ferguson, Henry S. Geyer, Wilson P. Hunt, M. P. Leduc, Mathias McGirk, Alexander McNair, Bernard Pratte, William Rector, and John C. Sullivan.[23] Benton's name was

[22] *Mo. Gaz.*, April 19, 1820, editorial.
[23] *Mo. Gaz.*, April 12, 19, 26, May 3, 10, 1820.

never listed with the other candidates in the newspapers but there were several petitions in circulation requesting his candidacy. It does not appear, however, that these petitions, were popular.[24] Since there were only eight delegates to elect, the thirteen anti-restrictionists of this group decided to select eight of their number as the running candidates and the other five were to resign, thus increasing the chances of the ticket. Each of the thirteen candidates appointed a deputy to represent him and these thirteen deputies held a private meeting in St. Louis on April 10th. At this meeting ballots were cast and the following seven candidates were decided upon: David Barton, Edward Bates, Wilson P. Hunt, Alexander McNair, Bernard Pratte, William Rector and John C. Sullivan. There was a tie between Chouteau and Benton, and, as the other four candidates were apparently dropped, the contest was between these two. The decision was finally given in favor of Chouteau. The other candidates publicly resigned and the lawyer slate of the foregoing eight candidates was placed before the people.[25] Besides this caucus meeting there was a public meeting of the anti-restrictionists at Florissant. Some at this meeting opposed the lawyers' ticket but it appears that the eight candidates were finally endorsed.[26] This ticket was the regular anti-restriction slate, it had organization and agreement back of it, and it was supported by the anti-restriction organ, the *Enquirer*. Further, it represented the radical pro-slavery sentiment of the county and stood before the voters principally on that issue. Its campaign slogan might well have been—Slavery Unrestricted for Missouri.[27]

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[24] *Mo. Gaz.*, April 26, 1820.

[25] *Mo. Gaz.*, April 19, 26, 1820. The charge was made by the opposition that Chouteau could not speak English and that only several days before the meeting of the caucus had given in his testimony in French by means of an interpreter before the district court. *Mo. Gaz.*, April 26, 1820, "An Elector." *Cf.*, *Mo. Gaz.*, May 10, 1820, editorial.

[26] *Mo. Gaz.*, April 26, 1820, "I."

[27] Chouteau declared himself only on the question of slavery (*Mo. Gaz.*, April 19, 1820); Hunt foolishly went into details regarding his anti-restriction principles and went so far as to practically defeat his major premise, to this may easily be attributed his defeat at the polls (*ibid.*, April 19, 1820); McNair was for unrestricted slavery and also for free, white male suffrage based on age, residence and a slight tax qualification (*ibid.*, April 26, 1820); Rector's principles

The second group of anti-restrictionists were composed of three candidates, John S. Ball, Risdon H. Price, and Thomas F. Riddick. These men were also for unrestricted slavery in Missouri, but they were running independently of the caucus slate. They further favored a free white male suffrage that was limited only by an age, residence and slight tax qualification.[28] Riddick also favored ballot voting. Of these men the most prominent was Riddick and his long and honorable public record in St. Louis was a strong recommendation for him.

The third class of anti-restrictionists embraced only one candidate, Rufus Easton. His address for election was directed to the independent voters. He favored leaving the question open in the hands of the legislature in regard to the migration of slaves. He opposed disturbing the convention, state and nation, by placing a binding prohibition in the constitution which would prevent the legislature from ever regulating or stopping the importation of slaves in the State. He said: "that subject should be left free for the state to legislate upon from time to time, unshackled by any constitutional provision." Easton was an anti-restrictionist only in this sense, that he opposed a slavery restriction clause in the constitution. In regard to suffrage he favored a tax qualification.[29] Such a stand on the slavery question was undoubtedly unsatisfactory to both restrictionists and anti-restrictionists. Easton probably resigned before the election as his name is not listed in the newspaper election returns.

The restrictionists had at least eight and perhaps eleven candidates at the beginning of the campaign.[30] Six of these resigned on April 19th, leaving the following five restriction candidates in the field: John Bobb, Caleb Bowles, John B. C.

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were the same as McNair's except that he also favored ballot voting (*ibid.*, April 19, 1820); Sullivan's position was the same as McNair's (*ibid.*, April 26, 1820). The individual announcements of the other candidates were not found.

[28] *Mo. Gaz.*, April 26, 1820. No declaration of principles by Ball could be found.

[29] *Mo. Gaz.*, April 12, 1820.

[30] It could not be ascertained regarding the platform of Clement B. Penrose, James Mackay and Alexander Stuart. The latter resigned on April 19th and probably the other two did this before the election. (*Mo. Gaz.*, April 12, 19, 1820.)

Lucas, Rufus Pettibone, and Robert Simpson.[31] This elimination process was probably the result of an agreement similar to the proceedings of the anti-restrictionists.

The head of the restrictionist ticket was Judge John B. C. Lucas, a prominent and honored lawyer and public official for years in the Territory. His principles were in general those of the other four candidates, except that he took perhaps a more conservative attitude towards slavery. Lucas stated his views in a lengthy article announcing his candidacy.[32] He disclaimed being a part of any ticket or clique, and stated that the opinions he had would be subject to modification in the convention if more information was there given. He assured the voters of his stand on slavery in the following language: "Were it not for the false statements that have been set afloat concerning my views, I should think it unnecessary to assure the public that nothing was or is more foreign to my mind, than to attempt to shake in the convention, diminish or impair any existing right, even the right to hold slaves or their offspring, to the most remote generations." He stated, however, that since the larger portion of Missourians were not slaveowners he was opposed to the further unrestricted importation of slaves, and favored every effort to prevent the increase or extension of slavery which effort was consistent with the vested rights of the people of Missouri. He said further: "I therefore am of opinion that it would be beneficial to the majority of the present population, and still more so to the future generations, to prohibit by this constitution the importation or the immigration of slaves from any state or territory into the state of Missouri from and after ———— time." While not critical regarding the importation of domestic slaves with their household masters, Lucas bitterly opposed plantation slave gangs coming into the State. He opposed the latter in his love for the free white laborer, small land owner, and tenant. Besides taking a definite stand on slavery Lucas favored ballot

[31] The other three to resign were Abner Beck, John Brown, and William Long. These all received votes, however, at the election. (*Mo. Gaz.*, April 19, 26, May 10, 1820.)

[32] *Mo. Gaz.*, April 12, 1820. This article also appeared in French in this paper on April 26.

voting as "the only means to allay the political paroxysm that seldom fails to happen at elections, and gives the weak, the timid, and the dependent, a fair opportunity to give a conscientious and independent vote, without exposing themselves to the violence of political bullies, or the vengeance of overbearing, wealthy and ambitious men." He also advocated a tax qualification for voters and opposed a freehold qualification. Notwithstanding these mild restrictionist views, Lucas was defeated. In a letter written by him on October 27, 1820, he stated that he did not succeed because he had favored a limit of five years or some short period from the adoption of the constitution as the limit for the importation of slaves. Thereupon, he added, the pro-slavery men called him an emancipator "and this is the worst name that can be given in the State of Missouri."[33] Lucas in a letter written eighteen months later stated that as he was known to have opposed the Spanish land claims, these claimants opposed him and reported that he opposed slavery in order to defeat him.[34] The evidence is conclusive that Lucas' restrictionist views defeated him at the polls, regardless of the causes that prompted his enemies to dwell upon these anti-slavery views.

The second restrictionist candidate in importance was Rufus Pettibone. He favored restricting slavery in Missouri, "but still for the sake of encouraging emigration" opposed for a number of years prohibiting "persons wishing to emigrate here, and settle among us, from bringing their slaves with them."[35] Pettibone opposed a freehold and favored a tax qualification only for voters and advocated ballot voting. A similar position was taken by Robert Simpson. While condemning slavery as a moral and political evil, Simpson opposed the emancipation of slaves and of their increase since slaves were property. He thought, however, that Missouri should prevent slaves being brought into Missouri as into a market and advocated

[33] "Lucas to Robert Moore (J. B. C. Lucas, Jr., comp. letters of Hon. J. B. C. Lucas, from 1815 to 1836, pp. 28f." (Citation taken from Trexler, p. 104.)

[34] "Lucas to William Lowndes, Nov. 26, 1821 (*ibid.*, p. 158); Lucas to Rufus King, Nov. 16, 1821 (*ibid.*, p. 148)." (*Trexler*, p. 104.)

Mo. Gaz., May 17, 1820.

[35] *Mo. Gaz.*, April 12, 1820. Letter dated April 10, 1820.

some restriction on slave immigration. Although a restrictionist, Simpson thought it expedient to "allow a reasonable time for those owing slaves and who may become interested in our soil, to emigrate to the state." "But," he added, "this question of slavery seems to have absorbed every other consideration." Simpson regarded the suffrage a greater one and was strongly opposed to a restricted or freehold qualification.[36] Caleb Bowles, another restrictionist, stated that if elected he would "use every endeavour to stop the further introduction of slaves at as early period as possible." He was explicit, however, in his opposition "to interfere with the slaves already in the territory." [37]

In short the position taken by the restrictionist candidates was perfectly clear. While in some instances opposed to slavery, all opposed tampering with or emancipating the slaves already in the territory or their increase. Existing property rights were always to be respected. While favoring restriction on the immigration of slaves into the territory, only one went so far as to advocate such restriction "at as early a period as possible."[38] The voters were given to understand that the restrictionists were not emancipators but only restrictionists.

In order to arouse public opinion and to organize, about one hundred restrictionists held a meeting in St. Louis on April 10th.[39] Joseph Charless was chairman and the resolutions adopted stated that the meeting was "decidedly opposed to any interference with the slaves" then in the territory,[40] that the further introduction of slaves should be stopped as early as possible," and that the St. Louis county delegates should try to effect this result in the convention; that the meeting opposed a freehold suffrage qualification and *viva voce* voting;

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[36] *Mo. Gaz.*, April 5, 19, 1820.

[37] *Mo. Gaz.*, April 5, 1820.

[38] Caleb Bowles. *Mo. Gaz.*, April 5, 1820.

[39] *Mo. Gaz.*, April 12, 1820.

[40] Joseph Charless in answer to "A Farmer" stated publicly as follows on this point: "I am apprised of the sentiments of all those candidates who are favorable to the future restriction of slavery, and have conversed with most of them on the subject, and I can assure them [the friends of "A Farmer"], that not one of them [the restrictionists] holds the opinion he depricates. They are decidedly opposed to any interference with the slaves in the territory." (*Mo. Gaz.*, April 12, 1820.)

that candidates declare their positions on slavery, suffrage and voting principles; and that the two St. Louis papers insert the resolutions. There were some present at this meeting who belonged to the anti side and these parties attempted to divert if not disperse the gathering. Their attempts failed but the *Enquirer* very unjustly branded all restrictionists thereafter as "disorganizers, or emissaries of King and Clinton, or the busy spirits of anarchy." [41]

From the data at hand it does not seem that a hearty reception was accorded the restrictionists. Even the restrictionists themselves became less assertive and less definite in regard to restriction as the days of election approached. Even the real leader of the restrictionists, Joseph Charless, hedged to the extent of emphasizing that Lucas stood for existing slavery rights and that as far as Lucas entertained restrictionist views these "private sentiments" would "yield to the public will, whenever it will be clearly and distinctly made known." [42]

The pro-slavery party, on the other hand, became more confident and dogmatic in regard to their positiion on slavery as the final test drew near. They stood firm on the single issue of slavery-restriction or unlimited immigration of slaves, and they went before the voters with seemingly little fear of defeat. They were glad to drop all other issues such as suffrage and voting, and stumped the county only against slavery restriction. Accusations and counter-accusations were in evidence but the pro-slavery men had the advantage.[43] The latter held the trump card, knew it, and would play no other. Side issues—as important intrinsically as slavery—were brushed aside by them and the flag of unlimited, unrestricted slavery was held up before the voters. They knew the power they wielded and

[41] April 19, 1820, by "A Member of the meeting."

[42] *Mo. Gaz.*, April 19, 1820, editorial.

[43] The *Enquirer* accused the Methodist preachers of preaching and laboring for slavery restriction. Some were even accused by the pro-slavery men of preaching rebellion to the slaves. The latter charge was never substantiated, and the former was denied by the Rev. M. Peck. (*Mo. Gaz.*, May 10, 1820, "Fair Play; *ibid.*, May 24, 1820, "A. McAllister.") The *Enquirer* spoke of the restrictionists as the "Yankees," a term of more wide-spread reproach in Missouri in 1820 than in the sixties. (*Mo. Gaz.*, May 3, 1820.) The pro-slavery candidates in St. Louis county were branded as debauched, depraved bachelors who formed a lawyer junto. (*Mo. Gaz.*, April, May, 1820.)

did nothing that would have impaired that power. They gathered to themselves popular opinion because they perceived and interpreted one thing that the people wanted. The people also wanted an unrestricted suffrage, except with age and residence qualifications, and an unrestricted system of voting, the ballot system, but they either desired or were led to desire an unrestricted slavery more than either or both of these.[44] The issue of the day had become solely a restricted or an unrestricted slavery system for Missouri.

The election was held on the first Monday and the two days following in May, which fell on the first, second and third of that month. Contrary to popular opinion and contrary even to former recorded Missouri history, this election was not held *viva voce*. The voting was by ballot.[45]

The St. Louis county polls were the center of interest of the Territory. There the restrictionists were strongest. There the anti-slavery men stood a better chance of electing a delegate than in any other county. On May 3rd, the last day of the election, the *Missouri Gazette* addressed the voters in an impassioned editorial, that even today has a modern, twentieth century ring. It said in part:

"Fellow Citizens, Today is the last opportunity that is left you to give your voice in forming a State Constitution. You are now called upon for the last time to say whether aristocracy and tyranny shall prevail—whether a few nabobs selected by a secret caucus, shall be forced upon you . . . . . , or whether you will exercise the proper persons to frame your mode of government. You are now called upon for the last time to declare whether yourselves, and your children, to the latest generation, will be cursed with slavery, ... ; or whether you will elect men who will take measures gradually to extinguish the evil, without interfering with the existing rights of property. . . . . Your destiny is fixed by the result of this day's vote."

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[44] *Mo. Gas.*, April 12, 19, 26, 1820, "Anthony Benezet;" *ibid.*, April 19, 1820, "A Mechanic;" *ibid.*, April 26, 1820, "An Elector."

[45] Billon, *Annals*, 1804-1821, p. 106, states that the election was held *viva voce*.

All territorial elections were held by ballot. This continued down to Dec. 9, 1822, when the *viva voce* system was adopted but ballot voting was even by that act still lawful. Ballot voting came back thirteen years later in 1835. In those days there was little material difference between the two systems: neither was secret, the judge or clerk of the election reading aloud the ticket cast or announcing the oral vote cast. Otis, *Election Laws of Mo.*, pp. 11f; *Mo. Ter. Laws*, I. 185, Act of June 18, 1808; *Ibid.*, pp. 297f., act of Jan. 4, 1814; *ibid.*, pp. 512f., act of Jan. 29, 1817; *ibid.*, (Laws of the State) p. 961, act of Dec. 9, 1822.

The result of the election in St. Louis county was, however, most gratifying to the pro-slavery party. All eight delegates elected were anti-restrictionists and all but one had been slated by the caucus. The total number of votes cast for all the restrictionist candidates was 2,026, while the total for the anti-restrictionists was 7,265—a ratio of nearly four to one for the pro-slavery party. The highest vote cast for a restrictionist was 400, which was given to J. B. C. Lucas; the lowest was 73, to William Long: the highest vote cast for an anti-restrictionist was 892, which was given to David Barton; the lowest was 144, to Ridson H. Price. The pro-slavery delegate who received the smallest number of votes was Thos. F. Riddick. His vote was, however, 562, or 162 votes more than Lucas received.[46] By no possibility could the restrictionists have elected a delegate. They were numerically in the minority. There were not more than four hundred restrictionist voters in the entire county and at least two hundred and sixty of these were located in the St. Louis township. Although only fifty-seven per cent of the total vote was cast in St. Louis township, the restrictionists obtained sixty-eight per cent of their total there. The stronghold of the restrictionists was the town, although even there the pro-slavery party had at least four hundred and seventy-seven voters as against the two hundred and sixty restrictionists. Moreover, nine of the pro-slavery candidates received more votes in St. Louis township than any restrictionist candidate. In each of the other two townships in the county the pro-slavery party was proportionately stronger than even in St. Louis.[47] In St. Louis township the pro-slavery candidates received three and one-half times as many votes as the restrictionists, in the other two townships the former received four times as many. However, in St. Louis township

[46] *Mo. Gaz.*, May 10, 1820. The pro-slavery votes were cast as follows: Barton, 892; Bates, 881; Chouteau, 586; McNair, 881; Pratte, 874; Rector, 889; Riddick, 562; Sullivan, 861; Ball, 303; Hunt, 392; Price, 144. The first eight were elected, Riddick the independent pro-slavery candidate won over Hunt the slated pro-slavery man. The restrictionist votes were cast as follows: Lucas, 400; Simpson, 390; Pettibone, 329; Bowles, 342; Bobb, 296; Beck, 111; Brown, 85; Long, 73. The last three had declined before the election.

[47] Votes given by townships for each candidate found in *Mo. Gaz.*, May 10, 1820.

the pro-slavery voters outnumbered the restrictionist voters, only about two to one; in the two other townships, three to one.

The organization of both parties was strongest in St. Louis township. Here the pro-slavery caucus slate of eight, went through with only a defection of one hundred votes in the case of Chouteau and about one hundred and fifty votes in the case of Hunt. Here the restrictionist ticket of five candidates was supported with slight scratching. In the other two townships, however, more independent voting obtained. Hunt, a slated pro-slavery candidate, polled only 74 votes in these, while Riddick, the independent pro-slavery candidate, polled 365 votes, and Ball, another independent pro-slavery candidate, received 179 votes. In one outside township, Chouteau was so unpopular that he polled only 7 votes, while his ticket secured an average of about 150 votes. To this independent voting Riddick owed his election.

The result of the election throughout the Territory was even more decidedly pro-slavery than in St. Louis county. The *Missouri Intelligencer* on June 10th, said editorially: "It is now certain that the whole Missouri delegation to the Convention are in favor of Missouri being a slave state unconditionally." The *St. Louis Enquirer* on May 10th, said editorially: "We undertake to say that there is not a single *confessed* restrictionist elected throughout the Territory, nor a *disguised* one that will venture to confess himself in the convention." The *Jackson Herald* on May 27th gave a list of the delegates elected in most of the counties and commented: "All in favor of the continuance of slavery in Missouri." [48] Even the independent editor of the *Missouri Gazette* wrote on May 10th the following bitter confession: "The election for members of the convention is past, and has resulted in the choice of candidates, whose sentiments on several points we honestly avow, we did not approve . . . . . If a majority of the people are willing and desirous that slavery shall exist eternally in Missouri; that the right of suffrage shall be confined to those

[48] The *Herald* on May 13th also copied in the *Enquirer's* comment of May 10th.

who own a freehold, or a quantity of negroes, that all voting shall be *viva voce*, we are contented."[49]

The results of the election in the other counties showed an even stronger pro-slavery sentiment than existed in St. Louis county. No record is found of there having been any restrictionist candidates before the people except in St. Louis, Jefferson, Washington, Lincoln and Cape Girardeau counties. In St. Louis county there were not over four hundred restrictionists; in Jefferson county, probably not a hundred; in Washington, about seventy; in Lincoln not over a hundred; and in Cape Girardeau, about one hundred and fifty. In the other counties there were either no restrictionists or they were negligible, since no candidate was put forth. Thus allowing the liberal number of eight hundred and twenty-five restrictionists in the five foregoing counties, it is quite probable that there were not over a thousand restrictionist voters in the Territory. As the ratio of votes cast to the white population ranged between one to five to one to eight, and as the total white population of the territory was approximately 56,000, the number of voters voting was between seven and eleven thousand. In short the restrictionists were not only in the minority but were hopelessly in that class, being outnumbered at least seven to one and perhaps nine or ten to one.[50]

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[49] See also *Mo. Gaz.*, May 17, 31, 1820.

[50] Lucas, who received the largest number of votes given a restrictionist, polled only 400 votes. In Jefferson county 265 votes were cast. This represented 265 voters, since Jefferson county elected only one delegate. There were three candidates in the field, Hammond, Henry—both pro-slavery men—and Vausant, restrictionist. Hammond and Henry probably received at least 165 votes. Hammond was elected. (Scharf, *Hist. St. Louis*, I, 563, gives return of votes for ten counties. Supposed to have been copied from the returns made to the Executive office.) In Washington county all three pro-slavery candidates were elected. All but 150 votes were cast at Mine a Burton. At this place, 1,147 were pro-slavery votes and only 61 were restrictionist votes. (*St. Louis Enq.*, May 10, 1820.) In Lincoln county, one delegate to elect, 248 votes were cast. (Scharf, *op. cit.*) Four candidates were in the field—two restrictionists and two pro-slavery men. A pro-slavery candidate, Malcolm Henry, was elected. The pro-slavery sentiment in Lincoln county was probably even stronger than in Jefferson county, since it had a larger slave population but a smaller white population. In Cape Girardeau county there were 837 votes cast. (Scharf, *op. cit.*) The single restrictionist candidate, Scripps, received only 147 votes. (*Jackson Herald*, May 6, 13, 1820.)

The ratio of votes cast to the total white population varied in different counties. In Washington county it was one to five, the number of votes being

Several writers on this subject of the election of delegates have stated that anti-Congress public opinion in Missouri had so influenced the people that the voters elected only strong pro-slavery delegates. In short that opposition to slavery restriction by Congressmen had reacted and become opposition to slavery restriction by Missourians; that anti-slavery men were so blinded in their hatred of anti-slavery legislation by Congress that they voted to perpetuate slavery among themselves; and that pro-slavery delegates were elected because of resentment against attempted anti-slavery legislation by Congress and not because of a pro-slavery sentiment.[51] Such statements and conclusions have a plausibility that carries with it an almost convincing proof. All agree that Missourians were deeply stirred in anger against attempted Congressional slavery legislation in 1819. There is no room to doubt that there were few in Missouri in that year who dared openly to approve the efforts made by the majority of the National House of Representatives to restrict slavery here. The evidence is conclusive on this point. The next step is that so bitter was the resentment of Missourians in 1819 against anti-slavery legislation by Congress that even anti-slavery men voted for pro-slavery delegates in 1820 to frame pro-slavery laws in a Missouri constitutional convention. No evidence is given to support this, it is merely a statement based on conviction. On the other hand would it not be just as plausible to say that a strong resentment against anti-slavery legislation of Congress existed in Missouri in 1819 not only because Missourians objected to any kind of Congressional interference but because they were strongly pro-slavery in sentiment?

The facts, however, are these in regard to the election of pro-slavery delegates in 1820. Missourians elected pro-slavery delegates by overwhelming majorities not because they were

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453 and the white population, 2,344. In Howard county the ratio was about one to seven, the number of votes being 1,735, the white population 11,319. In Cooper county the ratio was nearly one to eight, the number of votes being 797, the white population 6,307. (Scharf, *op. cit.*; U. S. Census, 1830, Schedule p. 23.)

For list of delegates elected see Appendix IV.

[51] Carr, *Mo.*, pp. 150f; Hodder, *Side Lights on Mo. Comp.*, in *Am. Hist. Ass'n. R.*, 1909, p. 155.

better men or anti-Congress men, but because they were anti-restrictionists. The voters and the candidates did not write anti-Congress articles for the April and May Missouri newspapers of 1820, but wrote addresses to the people on pro-slavery and anti-slavery premises, on anti-restriction and restriction bases, on suffrage and on voting. These were the issues of the day, and the big issue over all was slavery. No attempt was made even by the pro-slavery candidates to convert people by anti-Congress arguments, and if such an attempt had been made its superficial character would probably have incensed rather than enthused Missourians. Such argument would have been a poor battle cry in 1820 in Missouri, and there was no hesitancy in those days to seize campaign material wherever it could be found. Charless tried to defeat the pro-slavery lawyers by calling them bachelors and immoral men, and undemocratic even to the exercise of the suffrage. Benton tried to cast coals on the heads of the restrictionists by accusing them of inciting humble ministers of the gospel to preach the doctrine of emancipation in the negroe's hut: but neither dug up the dead past of Congress legislation.[52] Both sides fought openly and squarely on the slavery platform, and to the voters slavery was the big question to be forever settled.

The voters' interest in slavery was purely a matter of self-interest. The number of slaves in Missouri in 1820 equalled its number of voters. The 14,667 free white males over eighteen years toiled with or were toiled for by 10,222 human chattels. These ten thousand represented several million dollars that were doubly productive. No county had less than two hundred of these, and one county had twenty-one hundred. Then, there was the land-speculator, big and small. To get his profits or unearned increment, settlements were necessary. The quicker and the larger was immigration to the new State, the sooner he became wealthy. But immigration had set in from the south, the land of slavery. To restrict the slave immigration would be to limit white immigration. To argue that the stopping

[52] *Mo. Gaz.*, April 19, 1820; *St. Louis Enq.*, June 14, 1820, quotation from *Niles' Register*, May 13, 1820, which had been taken for an article in the *Mo. Gaz.*

of slave immigration from the south meant the beginning of white immigration from the north, was offering the speculator a chance in exchange for a certainty. Nor was the land speculator, big farmer and small, alone a convert to these ideas. The business man, the surveyor, the politician, believed that his business was bound up with more southern settlers and more slaves. Reasons of justice and humanity were on the side of the restrictionists, and perhaps the farsighted logic of the future was theirs, but the reasons of dollars and self-interest and the keen cut logic of the present fought on the side of the pro-slavery party. In such a struggle the justice and wisdom possessed by a few hundred souls were no strong competitors to the self-interest and prejudice of the thousands of voters.

CHAPTER V.

FATHERS OF THE STATE.

PERSONNEL OF THE CONSTITUTIONAL CONVENTION OF 1820.

It has always seemed strange to us that while much of the pioneer and military history of Missouri is familiarly known to all the United States, the lives of those men that framed and set in working the State's first constitution have excited so little interest even at home. Every schoolboy west of the Mississippi River and many east of it know something of that Kentucky and Missouri pioneer whose name has been popularly associated with the Boone's Lick Road, or of that famous Missourian who has been so appropriately called the "Xenophon of the Mexican War." Yet the work of either Daniel Boone or Alexander W. Doniphan is equalled in Missouri history by that performed by David Barton, Edward Bates, Nathan Boone, Alexander Buckner, John D. Cook, Henry Dodge, Duff Green, Samuel S. Hammond, John Rice Jones, Alexander McNair, John Scott and many others of the forty-one delegates of Missouri's first constitutional convention. While the fame of Boone and Doniphan is fittingly preserved in Missouri county and town named in their honor, only three of the forty-one delegates are today so remembered.[1] Indeed the lives of many of these constitution framers are today so hidden, not only from the general public but even from the historian,

[1] Barton, Ray, and Scott counties, Missouri. Lillard county, Missouri, was named after Colonel William Lillard, a delegate, but the name was later changed to Lafayette county. Boone county, Iowa, was named in honor of Major Nathan Boone, a delegate, who was one of the first white men to set foot in that district. Bates county, Missouri, was named in honor of Governor Frederick Bates, who was the first Secretary of Missouri Territory and later the second Governor of the State of Missouri. Governor Bates was a brother of Edward Bates. Clark county, Missouri, was named in honor of William Clark, territorial governor of Missouri, and not in honor of Robert P. Clark, a delegate. Henry county, Missouri, was named after Patrick Henry, and not in honor of Colonel Malcolm Henry, a delegate. Perry county, Missouri, after Commodore Perry, and not in honor of Samuel Perry, a delegate. Sullivan county, Missouri, after Sullivan county, Tennessee, and not in honor of Major John C. Sullivan, a delegate.

that only after years of labor is it possible to compile sketches of their lives.[2] This is the more singular when we consider that with few exceptions the convention was composed of the foremost men of Missouri of that day.[3] It included in its membership so many forceful leaders whose remarkable careers and abilities arouse our admiration that it seems unfortunate to be limited to sketches of only the most noted of them. We believe, however, that the most eminent delegates were David Barton, John Rice Jones, Duff Green, Edward Bates, and Henry Dodge. The first four were lawyers; the last was engaged in lead mining and farming. Although in the convention the influence of John D. Cook, Jonathan Smith Findlay, Alexander McNair, John Scott, or of several other delegates may have been greater than that of Henry Dodge, and perhaps equal to that of Duff Green, we have selected these two on account of their preeminently superior ability and their more remarkable and distinguished careers.

Excepting Jones all five were entering the prime of life. Their average age was not quite thirty-eight years: the youngest, Bates, who next to Baber was the most youthful member of the convention, had not yet completed his twenty-seventh year; the oldest, Jones, who was one of the four delegates that had passed the three score mark, was sixty-one years old. Barton and Dodge were entering middle age, being respectively thirty-seven and thirty-eight years old, and Green, one of the three youngest members under thirty, had barely attained the age of twenty-nine. Of these five the first to pass away was Jones, who with two other delegates did not live to see the constitution of 1820 in operation four years; Barton died within

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[2] The following generalizations on the delegates will not be supported with authorities, owing to the character of the summaries.

Houck, *op. cit.*, III. 253, speaking of the delegates says: "At any rate, it has been a matter of no small difficulty to secure reliable facts as to some of these worthies of other days, and in a few instances no details whatever could be found, so completely have their lives and very existence faded from the recollection of the present generation."

[3] The most noted exception was Thomas H. Benton. Whether Benton feared defeat at the hands of his many enemies, if he became a candidate for the convention, or reasoned that he could exert more influence both on the constitution and his future political fortunes, if he remained outside that body, is a matter of conjecture.

seventeen years; while Dodge, Bates, and Green, three of the last four survivors of the convention, lived to see another organic law govern Missouri, a civil war threatening the ruin of the Nation, and finally the restoration of peace.

Nothing illustrates more clearly the cosmopolitan character of the convention than the lives of its leaders. No two were natives of the same state or territory, and only Dodge and Green were reared in the same state: Bates was born and reared in Virginia; Barton in what is now the State of Tennessee; Green in Kentucky; Jones in Wales and England; and Dodge in what is now the States of Indiana, Kentucky and Missouri. The Bates family was one of the early English families of Virginia; the Bartons were of Scotch descent and date back to 1546, when they were great merchant captains and as such were called "Kings of the Sea;" the Dodge family was of pure English descent and had early settled in New England, where it grew for over a century and a half before trying its fortunes in the west; the Green family of Kentucky was of Welsh descent, and its first American sire was one of the original owners of the Shenandoah Valley; the Jones family is so ancient in the records of Wales that its history is finally lost in the maze of legends of that country. In this connection we cannot refrain from noticing the remarkable good fortune that has followed the descendants of four of these men. Excepting David Barton, all married and left large families; and some of the members of each have achieved distinction in public life. It is no exaggeration to state that these four men have lineal descendants scattered from ocean to ocean and from the Gulf to Canada.

The most popular man not only in the convention but in Missouri in 1820 was David Barton. A native of Tennessee both by birth and rearing and a member of one of the oldest families in America, he has always been written of by historians and biographers in the highest terms. He was undoubtedly the most interesting and forceful speaker among the delegates, and it is a question whether his superior or even equal as an orator could have been found west of the Mississippi River at that time, not even excepting Benton. We are certain that this Valley never sent to Congress a more vivacious, witty,

sarcastic, and fascinating speaker. Not only was Barton a brilliant speaker but he was also a man of sterling integrity.[4] Until he cast his vote for Adams in 1825, Barton was regarded both at home and throughout the Nation as one of its greatest leaders. His downfall in 1830 was due to this act of his in 1825, and to his refusal to align himself with the Jacksonian-Benton Democrats.[5] Barton was one statesman Missouri produced who feared neither Benton nor Jackson, and who alone could meet "Old Bullion" on the floor of the Senate with greater hope of victory than fear of defeat. Few public men in Missouri history have been so idolized, so unanimously raised to the highest public position in the gift of the commonwealth, and so soon retired to private life. His life supplies all the material necessary for a tragedy. After much scheming and working he secured the election of his friend, Benton, to the United States Senate, and this was accomplished only after using his own great popularity to overcome the most stubborn opposition due to Benton's unpopularity. In four years his friend had become his enemy, and in ten years was the chief instrument in causing his political death. Seven years later in a cabin near Boonville the ravings of a lunatic were silenced, and Missouri's first United States Senator and one of her greatest statesmen and orators had passed away.

While Barton was the most popular delegate and the most brilliant orator in the convention, he was neither so well educated nor so deeply versed in law as were several of his colleagues. In these qualities ranking over all the members was John Rice Jones, one of Missouri's first three Supreme Court Judges. This scholarly lawyer was an American by adoption, having been born in Wales of an old Welsh line. He received

[4] As an example of this last quality might be noted Barton's refusal to accept the very liberal courtesy—mileage allowed United States Senators when they are convened in executive session on the expiration of a Congress.

[5] Grave indictments were also made against the morals of Barton but we doubt if this was very influential in bringing about his defeat. Even in 1830 he was more popular than any other man in Missouri, excepting Benton. And the Benton forces were unable in that year to muster as many votes in the legislature as Barton did. The Missouri legislature in 1830 really elected a man who was the choice of the Barton forces. Alexander Buckner was a Jackson man who believed in Barton's policies. He was a compromise Senator and was far more acceptable to the Barton men than to the Bentonites.

an excellent education in both law and medicine at Oxford University, and later practiced law in London. Coming to America in 1784 he formed the acquaintance of such eminent men as Benjamin Franklin, and Dr. Benjamin Rush in Philadelphia. Attaching himself to General George Rogers Clark's force in 1786, Jones soon attracted attention in the Old Northwest Territory both as a lawyer and as a politician. He was the first English speaking lawyer in Indiana Territory, its first Attorney General for four years, a member of its legislative council for nearly a like period, and with John Johnson made the first revision of its laws. Having moved from Vincennes to the Illinois country first in 1789 and later in 1809, he holds the honor of being the first practicing lawyer resident in the latter territory. His knowledge of law is said to have been remarkable, being deeply versed not only in the English system of jurisprudence but equally so in that of the Continent. He was, we believe, not only the most learned member of the convention but between 1790 and 1810 was also the greatest lawyer west of Ohio if not west of the Alleghany Mountains. His practice at one time included the entire northwest comprising the State of Ohio, the Territories of Indiana and Illinois, upper Louisiana—later the Territory of Missouri, and the Territory and State of Kentucky. We know of no other lawyer in the early history of the United States who enjoyed so extensive a practice over such a large domain of territory and under so many systems of jurisdiction. His success as a lawyer was equalled by his accomplishments as a scholar and a linguist, and was greatly aided by his ability as a speaker. He was a skillful reasoner, and a perfect master of satire and invective. His contemporaries tell us he was a brilliant advocate; and his great knowledge of books and men combined with a wide experience, a restless and fearless disposition, and passions which when aroused swept all before them, made him a most effective and formidable opponent in either court or legislature. He was deeply versed both in mathematics and the classics, and was accomplished in the Greek, Latin, French, Spanish, Welsh, and English languages. United with these remarkable qualities of mind, John Rice Jones possessed the industry and skill of a

man of finance. Together with Moses Austin he opened the first cupola or reverberatory furnace in the United States, and his progressive ideas on lead mining were favorably commented on by the United States government officials. He was one of the wealthiest men in the Great West, being part owner of the richest and oldest lead mine in the United States at that time, and one of the largest land owners in the country. It is interesting to note that the direct descendants of this remarkable man have become prominently connected with the history of Illinois, Texas, Iowa, Arkansas, Missouri, Michigan, and Wisconsin.[6]

In this respect we cannot forbear from contrasting Jones and Barton. While the one brought up a family whose male line for decades produced noted statesmen and politicians and whose female branch perpetuated the sterling qualities of its sire in a long list of descendants, the other died a bachelor. The former lives in hundreds of his lineal descendants; the latter is remembered only in the pages of history and in the memoirs of his contemporaries and admirers.

One of the most devoted friends and worshippers of Barton was a reserved and refined young delegate, who only four years before had been admitted to the territorial bar of Missouri.

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[6] Rice Jones, the eldest son, was an early and brilliant lawyer at Kaskaskia in 1806. He was a member of the lower house in the legislature of Indiana Territory and his prominent and successful fight for the separation of Illinois from that territory resulted in his untimely death at the hands of an assassin.

John Rice Jones, another son, became prominent in public life in Texas. After helping that State achieve her independence, he was appointed the first Postmaster General under the Republic; and also under the provisional, *ad interim*, and constitutional governments. Two of his brothers, Augustus and Myers Fisher, also achieved distinction in the Lone Star State.

The most prominent son, George Wallace Jones, after holding office in Missouri and serving in the Black Hawk War, was elected a Delegate to Congress from Michigan Territory and later from the Territory of Wisconsin, and in 1848 was elected one of the first two United States Senators from Iowa, being reelected to that office in 1852.

A daughter, Harriet Jones, married the Honorable John Scott, who was Missouri's third territorial Delegate to Congress and who from 1820 to 1826 was that state's only Representative in the national legislature. Another daughter, Elizabeth Jones, married the Honorable Andrew Scott of Missouri, who held a Federal judgeship in Arkansas. *Cf.*, Wilkes, *Geo. W. Jones*, in Ia. Hist. Record, First Series, V. 433-456; W. A. Burt Jones, *John Rice Jones*, in Chicago Hist. Soc. Coll. IV. 230-270; Rozier, *Hist. Miss. Valley*, 274-278; Houck, *op. cit.*, III. 256f; Conrad, *Ency. Mo. Hist.*, IV. 470.

Never did the law of the attraction of opposites work with greater force than in the lives of David Barton and Edward Bates. Although maintaining a friendship similar to that which existed between David and Jonathan, they were in habits the antipodes of each other. The one was not only a confirmed victim of drink but led one of the most depraved and immoral lives in the history of great American statesmen; the other was the first president and the chief organizer of the Missouri Temperance Society, and, according to his most intimate friends and most bitter enemies, was an example of cleanliness and purity in his every private act. While Jones commanded the respect of the convention by the strength of his logic, and Barton won its good will and admiration by the persuasiveness and brilliance of his oratory, the youthful Bates entered into the hearts of all by virtue of his subtle mind, his pleasing and sincere manner, his high moral fiber, and his remarkable ability as a convincing speaker. Edward Bates was not only the most beloved but in many respects was one of the greatest men Missouri has produced. His ideals were of the highest order, his public career the longest—being finally crowned with a Cabinet position after nearly a half century of unremitting labors—and his entire life a model of success before the bar, on the floor, and in the home.

The pupil of one of the most prominent lawyers in the Mississippi Valley, Rufus Easton, who was also the teacher of that remarkable but unfortunate advocate, Joshua Barton, Edward Bates in turn became the friend and preceptor of the most brilliant and learned member of the Missouri Bar, James O. Broadhead. Although essentially a lawyer, Bates was one of the chief organizers and for decades was the leader of the Whig party in Missouri. Even after the rise of that great Whig statesman, James S. Rollins, he still retained in a large degree the mentorship of his party. While Bates is perhaps better known as a politician than as an advocate, he occupied comparatively few public offices. Some may explain this on the ground of his having belonged to the minority party in Missouri; but we are inclined to credit it to his dislike of office holding. Although Edward Bates was a remarkably successful lawyer, it required

his constant efforts in that profession to meet the expense of rearing his large family. To him the holding of public offices was a sacrifice, and it was only because of his highly developed sense of civic duty that he was at times induced to enter actively into public life. Notwithstanding his disinclination along this line, his record in both state and national politics is one of the longest and most successful in the history of the Middle West.

His first office was held at the early age of twenty-four, when he was appointed Prosecuting Attorney of the Northern Circuit of Missouri Territory; his last public position was enjoyed after he had reached the ripe age of seventy, when he held the office of Attorney General in the first Cabinet of President Lincoln. During the forty-seven years which intervened between his initiation into and graduation from public life, Edward Bates was elected or appointed to the following offices: delegate to Missouri's first constitutional convention in 1820; first Attorney General of Missouri, 1820; State Representative in Missouri Legislature, 1822 and 1834; State Senator, 1830; United States District Attorney for Missouri, 1824; Missouri's second Representative in Congress, 1826; appointed Secretary of War in 1850 by President Fillmore but refused the office; and Judge of the St. Louis Land Court, 1858. Besides holding these offices, he was three times brought prominently before the eyes of the nation. First, in 1847, while president of the first River and Harbor Improvement Convention held in America, Bates attracted the attention of both Canada and the United States. His great speech delivered before that body marks an epoch in the history of Federal Aid for internal improvements located off the tide-waters of the seas. This speech was made without previous preparation, and unfortunately, it was very imperfectly recorded. We are told that every reporter present forgot both duty and interest while listening to it and that the copies sent to the offices in New York, Chicago, and St. Louis, were the result of a hasty council of the various newspaper representatives who were forced to rely solely on their memory. Notwithstanding this incomplete and very unsatisfactory manner of presentation to the public, the effect of this speech on the nation was electrical.

Even that great statesman, John C. Calhoun, who for years had consistently and successfully opposed the position here taken by Bates, was won over by the skill and logic of this exposition of national aid to strictly internal improvements.

The second rise of Bates to national fame was his refusal in 1850 to accept the office of Secretary of War in President Fillmore's Cabinet. Not only was his appointment to this office unsolicited by Bates but it came as a surprise to him. Conditions for his acceptance were the most propitious, and the country could scarcely credit the news of his refusal. His reason, however, was satisfactory to all. He frankly explained that the cost of rearing his large family, which consisted of seventeen children, prevented his relinquishing even temporarily his lucrative law practice.

In 1856 Bates was president of the National Whig Convention which met in Baltimore. In 1858 Harvard University conferred on him the degree of Doctor of Laws in honor of his ability as a statesman, an orator, and a lawyer. Having become a Republican, Bates a third time attracted the attention of the Nation by being one of the presidential candidates voted on in the Chicago Convention of 1860, and after Lincoln's election he was offered the second choice of Cabinet positions, Seward having been placed for the office of Secretary of State. Bates chose the Attorney Generalship, which he held until 1863-4, when ill health forced his resignation. His death in 1869 was lamented by the entire Nation, and his funeral was one of the largest ever witnessed in this commonwealth. The life of Bates was a model in almost every respect. We cannot omit noticing one of his rules which is charged with revelations of character. On the best authority, Bates was never known to accept at law a bad cause however large the fee; and in numerous instances he engaged in a just cause with little or no compensation.[7]

[7] Bates left a large number of descendants, some of them achieved great distinction in public life. One son, Barton Bates, held the high position of a Judge of the Supreme Court of Missouri and the office of Attorney General; another, John Bates, was breveted lieutenant-colonel for his services in the Union army during the Civil War, and in 1898, at the breaking out of the Spanish-American War, was made brigadier general in the regular army.

In summarizing the salient features in the lives of Bates and Barton, one sees more points of likeness than contrast, except in regard to their personal habits. Both belong wholly to Missouri; both were lawyers of high rank; both had studied law under able jurists; both were interesting and at times brilliant speakers, and Barton's eloquence frequently reached the finish and polish of oratory; both were politicians and belonged to the same party; both were exceedingly popular, and Bates exerted an influence, both at home and over the nation, out of all proportion to the strength of his party in Missouri; and both died without having accumulated any considerable amount of property.

When we turn, however, to compare the lives of Jones and Dodge we are struck with the relatively few points of likeness and the large number of contrasts. The career of each is today the prized possession of three American commonwealths, Jones belonging to the history of Indiana, Illinois, and Missouri, and Dodge of Missouri, Iowa, and Wisconsin. Each left large families, each a son who was elected a Territorial Delegate to Congress and who later became a United States Senator. On the other hand, Jones was the possessor of one of the finest educations possible in his time and which he had obtained in the oldest of English universities; Dodge had received little schooling, and had obtained his entire education principally by rough experience with men and by self-instruction. The one was a scholar, and an accomplished linguist in six languages; the other was familiar with only the English tongue and various Indian dialects. One was at the head of the legal profession of the west and knew personally every important member of the bar in that section; the other became at one time the most popular and the most celebrated military leader north of the Ohio and west of the Mississippi, and had camped with friends and foes from the Canadian line to the Arkansas River and from the Great Lakes to the Rocky Mountains. One was an eloquent and forceful speaker; the other a man of few words and prone to physical action. Jones starting with nothing amassed an immense fortune; Dodge inheriting a large estate lost much of it, and, although prosperous in most of his

mining enterprises, never accumulated more than a moderate competence, owing to his liberality. While Jones was never more than a candidate for election to the United States Senate, Dodge rose step by step from the office of deputy sheriff in the Territory of Louisiana to the Governorship of Wisconsin Territory, was elected a Delegate to Congress from that Territory, and finally became a United States Senator from the State of Wisconsin. It is even reported that if Dodge had allowed his name to be used against Van Buren's in 1844, he would have been nominated and elected president instead of Polk.

General Henry Dodge, or "Honest Harry Dodge" as he was affectionately called by the West, was born at Port Vincennes, October 12, 1782, of English and Scotch-Irish parents. His minority was spent under his mother's guidance in Kentucky and later under his father's direction in upper Louisiana. His military career began early in 1806 and continued for nearly three decades; his civil career covered a period of over half a century. The former won him a place in popular favor next to that occupied by General Jackson; the latter raised him to the high honor of being appointed the first Governor of the original Territory of Wisconsin and also of holding that office two terms after the separation of Iowa Territory; of being elected the Territorial Delegate to Congress from Wisconsin, when a change in national politics had lost him his former position; and finally of being elected the first United States Senator from the State of Wisconsin. Although not a great man either in war or in politics, Dodge was an eminently successful one in both. His talents were essentially those of a leader, having been so endowed by nature in both mind and body and so trained by an active life among frontiersmen and Indians. Since the achievements of Dodge in the field are familiar to students of western history, we will turn to his less known though perhaps equally interesting and valuable career in politics.

In politics Dodge was a staunch Democrat, and a warm, personal friend of Jackson and Benton. As the chief executive of Wisconsin Territory he exerted the greatest influence in the enacting of good laws, both by forceful and decisively worded

messages and by his direct influence over the members of the legislature. He had that rare faculty of being able to maintain his prerogatives as an official without making enemies. His success in dealing with scores of Indian tribes both in peace and war was marked and to them he was one of the most feared and respected men in the west. The red sons of the forest and plain, whether enemies or friends, relied on the word of Henry Dodge when the threats and promises of other leaders had failed to move them. His strong common sense and fundamental honesty is shown in his refusal either to meddle in the fight over the location of the capital of Wisconsin Territory or to accept as a gift any lots in Madison.

After entering the halls of Congress, he always felt bound by the instructions of his legislature even though at times these were contrary to his personal convictions. He consistently advocated internal improvements, an adequate military force on the frontier, a duty on lead, and cheap land. His convictions on the land question were so statesmanlike that we marvel at the comparative silence of his biographers on this subject. As Governor of Wisconsin Territory in his second annual message of November 7, 1837, he said: "Land was the immediate gift of God to man, and from the earliest history of the world was designed for cultivation and improvement, and should cease to be an object of speculation." "Speculators in the public lands have purchased large tracts east of the Mississippi in this Territory, which remain waste until they will sell for the highest prices; thereby retarding the growth and settlement of the Territory to the great injury of the actual settler." On February 24, 1853, in supporting the Homestead Bill, Senator Dodge delivered what must be regarded as one of the most truthful, prophetic, and powerful speeches that found its way into the record. That speech is now almost forgotten, but before its centennial can be observed, not only scholars but men of affairs and all progressive citizens will be familiar with the fundamental truths it contains. We can recall but few instances in American history where our statesmen and writers have as thoroughly appreciated so great an evil, so

succinctly described it, and so accurately perceived its remedy as Senator Dodge did in this exposition of the land question.[8]

Interesting as is the life of Henry Dodge, we do not regard it more fascinating than was the checkered career of General Duff Green. In several respects Duff Green was one of the most remarkable of those men who framed Missouri's first constitution. He was beyond dispute the most versatile man in the convention; and became its greatest politician. In this latter capacity he attained a national reputation. Later he achieved honor as a diplomat, and finally in his old age received posterity's blessing by constructing a railroad and founding a city.

A native of Kentucky, Duff Green was related to some of the best and oldest families in Virginia. At an early age he taught school, studied law and was admitted to the bar, and sold goods as a country merchant. Having immigrated to Missouri Territory about 1817 he engaged in politics, mail contracts, speculation, and also had a large law practice. He established the first mail stage line west of the Mississippi river; and founded the town of Chariton, being its first postmaster. After the

[8] The following extract has been selected from that speech: "The soil of a country is the gift of the Creator to His creatures, and, in a government of the people, that gift should not become the object of speculation and monopoly. Springing from the earth and destined to return to it, every man desires to possess some of it, wants a spot he can call his own. It is a deep and absorbing feeling which no people have manifested more strongly than the Americans. If you desire to render this Republic indestructible, to extinguish every germ of agrarianism, and secure for ages the quiet enjoyment of vested rights, you should give an interest in the soil to every man who asks it. If every quarter section of the public land was the *bona fide* property of an actual settler, it would do more to perpetuate our liberties than all the constitutions, State or National, which have ever been devised. Incorporate every man with the soil, throw around him the blessed endearments of home, and you bind him in an allegiance stronger than a thousand oaths." When we recall that these words were spoken not by a rabid demagogue or a pauper social disturber, but by an old man in his seventy-first year, who was a United States Senator, who held large landed interests, and who based his statements on a personal experience in public life that had covered nearly half a century, then the weight of their truth is increased tenfold.

If it were not too much of a digression we would be glad to enter even briefly into the private life of this celebrated "Captain of Aggressive Civilization," to describe his views on such questions as religion and slavery, to eulogize his remarkable mother, Nancy Ann Hunter, who alone in the annals of this nation gave birth to two United States Senators, Henry Dodge and Lewis F. Linn, and to expand upon this, the only example in our history, of a father and son—Henry Dodge and Augustus Caesar Dodge—sitting together first in the lower house of our national legislature and finally in the Senate chamber.

framing of Missouri's first constitution, Duff Green was elected a representative from Howard county in 1820 to the State legislature and in 1822 was elected a State Senator. In 1821 he was chosen Brigadier-General of the first brigade of the first division of the Missouri militia, and owing to his holding this office together with his services in Kentucky in the War of 1812, he was always known as General Duff Green. In 1823 Green became owner and editor of Benton's organ, the *St. Louis Enquirer*, and two years later purchased and edited the *United States Telegraph* at Washington. From that time to his death in 1875, he was always more or less before the public. As editor of the *Telegraph* he became one of the most powerful factors in national politics, and is credited with having been one of the chief instruments in the election of Jackson in 1828. His paper was then given the government patronage, and this placed Green in good financial circumstances. His subsequent break with Jackson in 1830, his support of Clay in 1832 and of Calhoun in 1836, did not ruin him, as it did many other politicians. His paper continued to wield the greatest influence, and was known for its aggressiveness and independence, and for its large and philosophical views on national finance.

General Green visited Europe frequently on important public missions, conferring with leading statesmen and crowned heads. In 1843 he was sent to Mexico to aid in conducting negotiations for the acquisition of Texas; and under President Taylor's administration was again dispatched there on public business.

In later life he took the contract for constructing the Tennessee Railroad from Dalton, Georgia, to Knoxville, Tennessee, and was one of the founders of the former city. In the lives of few men are there crowded so many different and dramatic events as are revealed in Green's career. In many ways it is an epitome of the biography of the entire convention of 1820.

The public life both civil and military of these forty-one men is quite sufficient to justify our stating that seldom in the history of any commonwealth established after 1789 has there been a more notable gathering of state constitution framers

JOHN RICE JONES.
From Houck's *Hist. Mo.* III. 257

JOHN D. COOK.
From Houck's *Hist. Mo.* III. 266.

JOHN SCOTT.
From Houck's *Hist. Mo.* III. 13

JONATHAN RAMSAY.
From Houck's *Hist. Mo.* III. 263.

B. H. REEVES.
From Houck's *Hist. Mo.* III. 259.

HIRAM H. BABER.
From Houck's *Hist. Mo.* III. 265.

SOME DELEGATES TO THE MISSOURI CONSTITUTIONAL CONVENTION 1820.

than was this one. It included the first United States Cabinet official appointed from west of the Mississippi river, three men who later represented Missouri and Wisconsin in the United States Senate, and, so far as influence on Missouri's constitution is concerned, a fourth United States Senator might be mentioned.[9] Of those who had or were to enter the lower house of Congress there numbered four;[10] and two delegates later sat in the gubernatorial chair of Wisconsin and of Missouri.[11] One delegate was to hold the office of lieutenant-governor; two that of attorney general; two that of secretary of state; and two that of state auditor.[12] Two of the leading members of this convention became judges of the Supreme Court of Missouri, two were later circuit judges in this State, and one had presided over the first circuit court held west of the Mississippi River.[13]

The membership of the convention is also noteworthy in the remarkably large number of state legislators who composed it. The laws of five American commonwealths today bear the influence of twenty-three of the framers of Missouri's first constitution. Including its secretary, the convention commanded the ability of sixteen state senators, and sixteen state

[9] Edward Bates, appointed Secretary of War by President Fillmore, 1850, and resigned; later appointed Attorney General by President Lincoln 1861-1864; David Barton, first United States Senator from Missouri 1820-1830; Henry Dodge, first United States Senator from Wisconsin 1848-1857. Thomas H. Benton, the colleague of Barton, was United States Senator from Missouri 1820-1850.

[10] Edward Bates, Missouri's second Representative, 1826; Henry Dodge, first Delegate from Wisconsin Territory, 1841-1845; Samuel S. Hammond, Representative from Georgia, 1803; John Scott, Missouri's third Territorial Delegate, 1816 (17)—1820, and Missouri's first Representative, 1820-1826.

[11] Henry Dodge, first territorial governor of Wisconsin Territory, 1836-1841, and again, 1845-1848; Alexander McNair, first state governor of Missouri, 1820-1824.

[12] Benjamin H. Reeves, Missouri's second lieutenant-governor, 1824; Edward Bates, Missouri's first attorney general, 1820, and John Rice Jones, former attorney general of Indiana Territory, 1805; Samuel S. Hammond, later secretary of state of South Carolina, about 1830, and William G. Pettus (secretary of the convention), Missouri's second secretary of state, 1821-24; Benjamin H. Reeves, Missouri's second state auditor, 1821-23, and Hiram H. Baber, Missouri's sixth state auditor, 1837-45.

[13] John D. Cook and John Rice Jones, two of the first three judges of the Supreme Court of Missouri, 1820; David Barton, judge of Northern Circuit of Missouri Territory 1815-18, held first Circuit Court west of the Mississippi; James Evans and Richard S. Thomas, Circuit Court Judges of Missouri, 1837 and 1822.

representatives,—there being eight members who later sat in both houses.[14] In fact to each of the first ten General Assemblies of the State of Missouri there were elected from one to eleven men who had sat in this convention, and two became the president *pro tempore* of the Senate.[15] Nor was their direct influence on Missouri's legislature limited to the commonwealth period. During the previous eight years of the existence of Missouri Territory there appear on the general assembly rolls the names of eight men as members of her legislative council and eight as representatives who in 1820 sat as delegates in the convention.[16] In each of the four general assemblies of Missouri Territory there were from four to eight members who were elected delegates in 1820. Thus for a period of thirty-eight years the laws of Missouri were more or less moulded by those who framed her first constitution. And for eleven years her only representatives in Congress were those who were delegates in 1820. What is still more remarkable is that Missouri's first constitution was directly influenced by her first three United States Senators, one of them, Benton,—although not a delegate—continued in the upper national chamber for thirty years. But, excepting Edward Bates, Duff Green, and Henry Dodge, not a single member of this convention held an important civil position in public life twenty years after the framing of Missouri's first constitution. A new generation of

[14] The five states are Missouri, Kentucky, Tennessee, Georgia, and South Carolina. The following delegates had been or became state senators in Missouri: Barton, 1834; Bates, 1830; Bettis, 1828; Brown, 1826; Burckhartt, 1824; 1830; Buckner, 1822; Chouteau, 1820; Dawson, 1824, 1834; Emmons, 1820; Green, 1822; Perry, 1820; Pratte, 1820; Reeves, 1820, 1832; Talbott, 1820; Thomas, 1826; (Pettus, 1832). Of these the eight who were also representatives were: Bates, 1822, 1834; Bettis, 1822, 1824, 1826; Burckhartt, 1822, 1826; Buckner, 1830; Dawson, 1832; Emmons, 1836, 1838; Green, 1820; Reeves, Kentucky Legislature. Besides these were eight who held seats in the lower house of Missouri, Georgia, South Carolina, Kentucky and Tennessee. Nathaniel Cook (Missouri), 1822; Hammond (Georgia and South Carolina); Heath (Missouri), 1820; Henry (South Carolina); Lillard (Missouri), 1820, and also in Tennessee Legislature; McFerron (Missouri), 1820; Ramsay (Kentucky), and also in Missouri Legislature, 1822; Ray (Missouri), 1820.

[15] Emmons, 1822; Burckhartt, 1830.

[16] The eight delegates who had been in the legislative council were Emmons, Hammond, Scott, Jones, Perry, Riddick, J. Cook, Dawson; in the house of representatives, Thomas, Byrd, Heath, Dawson, N. Cook, Talbott, Barton, Sullivan. Hammond was president of the first legislative council in 1813, and Emmons in the last in 1818. Barton was speaker of the house in 1818.

political leaders had risen, and in the place of Barton, Burckhartt, Buckner, the two Cooks, Dawson, McNair, Scott, Emmons, Evans, Hammond, Jones, Reeves, and other popular and influential members of the convention of 1820, the pilots of the ship of state were such noted men as Atchison, Campbell, Rollins, Price, Doniphan, Phelps, Woodson, Boggs, Jackson, Gardenhire, Switzler, Bay, Broadhead, Bingham and others.

In addition to holding many minor public offices as those of county clerk, recorder, sheriff and treasurer, and justice of the peace, some of the delegates were to be or had been appointed to important civil positions under the National Government, besides those already mentioned. Among these were the offices of Marshal, Deputy Marshal, Attorney General, Deputy Attorney General, District Attorney, Lieutenant-Governor or Commandant of upper Louisiana, Surveyor General and Deputy Surveyor General of Illinois, Missouri and Arkansas, Register and Clerk of various Land Offices, Judge of the St. Louis Land Court, Receiver of Public Money at St. Louis, and Diplomat.[17]

The war record of the convention delegates and its secretary is also sufficiently noteworthy to warrant attention. Extending at least from 1775, if not prior to that year, to 1850 this record embraced the first three great national wars of the United States besides including the famous Black Hawk War and many Indian engagements. Twenty-one men of this convention, or exactly one-half its membership including the secretary, had seen or were to see military service. Of these, three had served as colonels in the Revolutionary War;[18] eighteen had been in

[17] Baber, United States Deputy Marshal (1820, 1830), and United States Marshal Missouri (1852); Barton, Deputy Attorney General Missouri Territory (1813); Bates, Judge St. Louis Land Court (1858); J. Cook, United States District Attorney Missouri; Dodge, United States Marshal Missouri Territory and State (1813-1822); Findlay, Register United States Land Office Lexington, Missouri (1823); Green, United States Diplomat; Hammond, First Lieutenant Governor or Commandant of upper Louisiana (1804); Jones, Attorney General Indian Territory (1801-05); McNair, Register St. Louis Land Office (1818); Pratte, Receiver Public Money at St. Louis; Rector, United States Surveyor General of Illinois, Missouri and Arkansas; Riddick, Secretary Board of Land Commissioners at St. Louis (1808); Sullivan, United States Deputy Surveyor General of Illinois, Missouri and Arkansas; Pettus, clerk Land Office at St. Louis (1818).

[18] Hammond, Henry, and Lillard.

the War of 1812,[19] ranging in rank from volunteer to brigadier-general; four later served in the Black Hawk War;[20] and one in the Mexican War.[21] Boone and Dodge gained the greatest distinction in the field of War. One attained the higher rank; the other, the greater popularity. Boone held the longer record and after twenty-one years of continuous service in the United States army was finally commissioned lieutenant-colonel at the age of seventy-one.[22] Prior to his connection with the regular army, he had fought in the War of 1812 and had seen service in various Indian campaigns. Dodge made an enviable record in his campaign against Black Hawk, and, after the overthrow of that celebrated Indian Chief, won fame in the United States army as colonel of the first regiment of dragoons in the army history of the United States. Prior to his connection with the regular army, Dodge had continuously held some rank in either the Missouri or Wisconsin militias from 1806. The war record of Dodge covers a period of nearly twenty-nine years; that of Boone over thirty-one years.

While the military and the civil public careers of western pioneers are both interesting and significant, we are inclined to regard with some favor those bits of biographical information which are usually found in the back of Bibles, or in the columns of the press, or which can be obtained only from descendants and friends of those long departed. We cannot here examine all the wealth of detail extant relating to the delegates and will generalize on such points as occupation, nativity, descent, education, economic position, and age. Under the best conditions it is almost impossible to verify every statement relating to this kind of information. And, we have therefore inclined towards sacrificing spectacular and striking generalizations for the sake of accuracy. One of the most fascinating and profitable studies of any people is that relating to their occupation. To

[19] Barton, Bates, Boone, Byrd, Cleaver, N. Cook, Dawson, Dodge, Emmons, Green, Jones, Lillard, McNair, Pratte, Ramsey, Rector, Riddick and Pettus. Dodge was brigadier-general of the Missouri militia; Ramsay held the same rank in the Kentucky militia.

[20] Boone, Brown, Byrd, and Dodge. Dodge was called the hero of this war.

[21] Boone.

[22] 1853.

the historian the means employed by man to gain a livelihood takes rank in importance with his religion and race. To the pioneer it was as important and pressing as it is today to the greatest specialist in the city. There is this difference to be noted, however: the pioneer was as a rule more versatile; the twentieth century man better trained. The one successfully pursued from two to a half dozen different occupations; the latter is more frequently engaged in but one line of labor. Even in politics, where are found the followers of every occupation, and which is as cosmopolitan in professions and trade as New York in people, there had not appeared in 1820 that general devotion on the part of one class of citizens which later became so marked. Of course politics was not then so profitable, unless one wished to incur public disfavor by land speculation, and the spoils system had not yet become the Mecca of public life. But, waiving these two extraneous reasons, we still believe that politics, in common with most all other occupations, excepting the law, was not so specialized a means of livelihood in 1820 as it is today. Nor was politics so peculiarly the possession of the legal class as it is today, although practically all lawyers were also politicians. Of the forty-one delegates elected to the convention of 1820, thirty were more or less active in politics, of whom only nine were essentially lawyers.[23] Every lawyer in the convention was a politician, but all the politicians were not lawyers.

Although the various occupations of each delegate are now fairly well known, it is still almost an impossibility to ascertain which was the principal vocation of each one at that time. Duff Green was a lawyer with a large practice; he was also an astute politician, a successful business man, a large land owner and speculator, had formerly been a teacher, and later became an editor, publisher, railroad contractor, and diplomat. Similar examples of the difficulty of selecting a delegate's principal means of livelihood are found in the lives of a majority of these men. Was Dodge a lead mine operator or a farmer; was Jones one of these, or was he a lawyer and politician; was Nathaniel Cook a politician, a farmer or a sur-

[23] Heath practiced law but he was more essentially a business man.

veyor; was Boone a farmer or a surveyor; was Bettis a merchant, a farmer, or a doctor; was McFerron a politician or a teacher? We are even driven to this: Every delegate except two engaged in two or more lines of work. In 1820 these forty-one men represented eight occupations under the very broad classifications of law, politics, business—including mercantile and mining pursuits, fur trading, salt manufacturing and finance—, agriculture—including farming and land owning—, medicine, civil engineering—confined to surveying—, education—confined to teaching—, and journalism.

Politics absorbed the partial attention of thirty delegates but it was the sole occupation of only one or two of these. Besides the nine lawyers in the convention politics included eight business men, nine engaged in agriculture or land owning, two in medicine, two in engineering and two in education. This almost universal passion for politics and public life was characteristic of the west at this time. Every lawyer was seized with it. Every man who had attained any degree of popularity wanted to hold office. As a rule it included the best and most able men in a community. Politics was then an honorable profession to which all turned even at a sacrifice. It is academic whether these men regarded politics as a duty or as a pleasant recreation. At all events we are certain that very few looked upon it as a great prize except for the honor attached to it. No man was so busy, so engaged in accumulating wealth, so learned, or so able that he spurned public office. We believe several causes brought about this admirable state of mind. The widespread and long continued interest of the colonies in public affairs for nearly a quarter of a century; the internal crisis between 1783 and 1789; the relations with England and Spain in the nineties; the armed truce or masked war with England and France during the first decade of the new century; the Louisiana Purchase; the War of 1812; the numerous Indian wars; the great domestic questions which arose from 1783 to 1820; all trained the American people to a consideration of public questions. Intense interest in politics tends to create a desire to enter public life. This is more quickly acted upon when there is an honor instead of a stigma attached to office

holding; and when the greatest opposition to overcome is merely votes and not machines and vested interests. The conditions in these respects were ideal in 1820 for a citizen's participation in public life. Another favoring factor was the then more circumscribed fields of intellectual activity. This gave an impetus unknown today to the study of political science, which study was, however, as intrinsically interesting and absorbing then as it has ever been. In addition, might be mentioned the greater relative power of the orator and conversationalist as compared with that of the editor. The latter was handicapped for his information and in his circulation by the poor mail facilities. Missouri with a white population of over 55,000 in 1820, had but five newspapers, and these were located in four towns. Only one newspaper to supply the news to the thousands of settlers west and north of St. Charles and St. Louis! Only one paper to inform the territory lying south and west of Jackson, Missouri! Today a town of 10,000 has from two to five papers, and its inhabitants take perhaps a dozen others printed within a radios of one hundred and fifty miles. Today no county is without its weekly edition of local news, and many villages of less than five hundred inhabitants have their own press. The newspaper of 1820 was as influential wherever it circulated as any paper is today among its subscribers, but natural and mechanical obstacles prescribed its limits then within narrow bounds. The personality of the politician—using this word in its original and better meaning—and his ability as a speaker, were therefore enhanced.

In no profession are these qualities when highly developed either so advantageously and widely displayed or so assiduously cultivated as in the practice of law. And, no profession, we believe, has so directly and so significantly influenced our government and laws as the legal class. It is, therefore, quite remarkable that only ten of the forty-one delegates were members of the Missouri territorial bar; and one of these was more accurately a business man than a lawyer. Today, over fifty per cent of the upper house members of our state legislature are lawyers, and our state executives are as learned in law as our attorneys-general; in 1820 less than twenty-five per cent

of the delegates who framed the first constitution of Missouri followed that profession, and this state's first governor had never been admitted to the bar,—as far as could be learned. The significance, if not the explanation, of this peculiar attitude on the part of the people of Missouri in 1820 can be appreciated only after a consideration of the history of the Missouri territorial bar.

During the Spanish regime in upper Louisiana there was no lawyer class. This was due primarily to the manner of law interpretation that prevailed. The American occupation in 1804 immediately attracted to this district members of the bars of many states and territories. Lawyers of ability and prominence immigrated here from every section of the nation. The north, central and south Atlantic commonwealths sent representatives, as well as that country which lies between the Appalachian Mountains and the Mississippi River. Considering the small population of upper Louisiana, the amount of litigation was remarkable, and much of this was highly remunerative. The hundreds of suits over the valuable Spanish land grants proved an especially lucrative field for the legal profession. This kind of litigation frequently involved prizes that would have ransomed a prince, and the rewards to advocates were in proportion to the value of the case. Under such favorable circumstances it is not surprising that we find a very large bar in Missouri during the territorial period. Nor was this bar less noted for its ability than for its numbers. In fact the former characteristic is more prominent and significant than the latter. The nature of the cases, the mixed population, the previous domination and the then but slightly diminished power of the Spanish law, all required a broad and acute legal mind to win success in court. The result was a bar which in pure, legal ability undoubtedly stood very high.[24] Other states have produced greater lawyers; many have had a larger bar; but few states in proportion to their population have had so many lawyers of such remarkable ability as Missouri did from 1804 to 1820. It is hardly an exaggeration to state that owing to the conditions named, together with the compactness

[24] *Cf.*, also Bay, *Bench and Bar of Missouri*, pp. VI. ff; Houck, *op cit.*, III. 12.

of the settlements in Missouri Territory, and the peculiar organization of the courts, a lawyer of little ability could not make a living by his profession in this district. Only lawyers learned in the law and skilled in pleading and cross-examination could survive. Therefore we find such men as these constituting the legal class at that time: Ezra Hunt, Henry S. Geyer, Silas Bent, John F. Ryland, Hamilton R. Gamble, William C. Carr, Abiel Leonard, David Todd, Mathias McGirk, Robt. W. Wells, Geo. Tomkins, Thomas H. Benton, Rufus Easton, Rufus Hemstead, Johnson Ranney, John B. C. Lucas, Alexander Gray, Rufus Pettibone, Luke E. Lawless, Peyton R. Hayden, Nathaniel Beverly Tucker, Joshua Barton, Frederick Bates, David Barton, Edward Bates, Alexander Buckner, John D. Cook, James Evans, Duff Green, John Rice Jones, John Scott, and R. S. Thomas. It is a remarkable fact that of these noteworthy men only the last nine were elected delegates! Perhaps a few like Lucas had been defeated on account of being slavery restrictionists, but, we are certain, these formed a very small percentage of their class.[25] This together with other evidence would indicate that the people of Missouri in 1820 preferred to have their constitution framed by other classes of men. They did not realize that the legal class by virtue of its ability alone wields an influence in the field of legislation out of all proportion to its numbers, and that in the convention or forum it has always enjoyed a preeminent position. This influence and position of lawyers in law making bodies have in this country been strengthened by their ability to cooperate with other classes. And in this respect the lawyer's most natural ally has been and still is the business man.

An eminent authority has said that at least nine-tenths of all legislation owe their origin, directly or indirectly, to the associated influence of the merchant, trader, and banker on the one hand, and the lawyer on the other.[26] We are not prepared to examine the correctness of this statement, but, we believe, it is well substantiated in the framing of Missouri's

[25] Easton had died at this time; and Hunt and Gamble had not then achieved distinction.

[26] Foote, *Bench and Bar of the Southwest*, p. 3.

first constitution. Although only eleven business men[27] and nine lawyers were elected delegates to the convention, their influence in that body was without a serious check. In the committees of the convention they were practically supreme. The president of the convention was a lawyer; the legislative committee was composed of a lawyer, a business man, and a politician; the executive committee was composed of a lawyer, a surveyor, and a farmer—the latter being the brother of a lawyer; the judiciary committee was composed of three lawyers; the select committee, which reported on the work of the three named committees, was composed of three lawyers, and a farmer; the committee on a bill of rights, etc., was composed of a farmer, a business man, and a lawyer; the committee on the schedule and banking was composed of a lawyer, a business man, and a teacher; the revision committee, or committee on style, and the enrollment committee were each composed of two lawyers, and a teacher. In seven of these eight committees the business man and the lawyer constituted a majority of the membership; and in the eighth these two classes had the co-operation of a surveyor whose interests were identical with theirs.[28] Of the twenty-five committee places on these eight committees, one was held by a surveyor; three, by teachers; three, by landed men; one, by a politician; three, by business men; and fourteen, by lawyers.

This remarkable strength of the lawyer class is the more significant when we realize that there were thirteen delegates in the convention who were mainly interested in agriculture and landholding.[29] We would not be understood as stating that on all questions that arose there was a line of division in the convention between the lawyers and business men on the

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[27] The following delegates were engaged principally in business, ranging from a tavern keeper and store-keeper to a banker and fur merchant: Baber, Burckhartt, Chouteau, Dodge (mine operator), Emmons, Hammond, (speculator, more allied to the business than to the agricultural class), Heath, Houts, McNair, Pratte, Riddick.

[28] The members of the executive committee were Rector, a surveyor; N. Cook, a land holder and a brother of J. Cook, the lawyer; and Evans, a lawyer.

[29] The following delegates belonged to this class: Bettis, Boone—a surveyor but, we believe, more interested in land at this time—, Brown, Byrd, Cleaver, N. Cook, Henry, Hutchings, Lillard, Perry, Ramsay, Ray, Wallace.

one hand, and the agriculturists on the other. Such is not true; but it is correct to say that the influence of the former was much greater than that of the latter, and further that Missouri's first constitution was largely the work of the former, even though the lawyers and business men did not comprise one-half of the delegates.

Besides the occupations named that were represented in the convention, there were three others which were each followed by two delegates. The medical profession was followed by Dawson and Talbott; the civil engineering, by Rector and Sullivan; and the teaching, by Findlay and McFerron. Of these six men McFerron and Findlay were the most active in the convention, and achieved the least financial success in life.

Another feature of this body that attracts attention is its cosmopolitan appearance. There were represented in the convention seven lines of descent. The English race claimed a majority of the delegates; the Welsh, two; the Scotch, at least two; the Irish, at least four; the Scotch-Irish, which, we understand, is generally distinguished by genealogists from the Scotch, at least four; the French, two; and the German, one.[30] Even more diversified was the nativity of the members of the convention. The slave-holding commonwealths, as one would expect, were the birthplaces of a majority of the delegates. Contrary to popular opinion, Kentucky did not lead in this respect; to Virginia was this honor given. The former furnished eight of Missouri's State Founders; the latter, thirteen. Standing next to Virginia and Kentucky was Maryland with four delegates, and, what is equally at variance with accepted notions on this point, Pennsylvania followed with three delegates. The place of birth of the remaining members of the convention is as follows: Tennessee, then part of North Carolina, two; North Carolina, two; upper Louisiana, while under Spanish rule, two; Indiana Territory, before the organization of the old Northwest Territory, one; New York, Vermont,

[30] Green and Jones, Welsh; Barton and Henry, Scotch; Hutchings, McFerron, Ramsay, and Thomas, Irish; Cleaver, Findlay, McNair, and Talbott, Scotch-Irish; Chouteau and Pratte, French; Burckhartt, German; and the other delegates, excepting several that we were unable to trace, English.

South Carolina, Wales, and Ireland, each one.[31] It is quite a commentary on the wane of the French influence that only two delegates were of French blood. Less than sixteen years before when the first convention was held in upper Louisiana, protesting against the act of Congress of 1804, the French representatives were in the majority; and, if we look back four years further to the close of the eighteenth century, we see that race the most influential west of the Mississippi River. We recall few instances in history where an enlightened, peaceful, and fairly prosperous race, has ever been so ignored in governmental affairs in such a short time by any other means than by force.

Closely related to nativity is the place of one's rearing. If in considering the latter we include the places of residence in which the delegates had lived before coming to what is now Missouri, there is no state that holds as prominent a position in this respect as was met with under our discussion of places of birth. While Virginia was the mother of thirteen delegates, she had the exclusive control of but three of these before their settlement in Missouri. Kentucky was the single home and residence of only six delegates. Five members of the convention had been reared and had lived in Virginia and Kentucky; two in Virginia, Kentucky and Tennessee; one in Virginia and Georgia; one in Virginia and Tennessee; one in Virginia and Illinois Territory; one in Virginia and Indiana Territory; one in Kentucky and Indiana Territory; one in Kentucky and Maryland; one in Kentucky, Maryland and Ohio; one in Kentucky and upper Louisiana; three in Tennessee; two in

[31] Those born in Virginia were Baber, Bates, Clark, J. Cook, N. Cook, Evans, Hammond, Hutchings, Lillard, Ramsay, Rector, Riddick, and Scott; in Kentucky, Boone, Buckner, Cleaver, Green, Ray, Reeves, Sullivan, and Wallace; in Maryland, Burckhartt, Dawson, Talbott, Thomas; in Pennsylvania, Findlay, McNair, and Perry; in Tennessee, Barton and Byrd; in North Carolina, Bettis and Brown; in upper Louisiana, Chouteau and Pratte; in Indiana Territory, Dodge; in New York, Heath; in Vermont, Emmons; in South Carolina, Henry; in Ireland, McFerron; and in Wales, Jones. The birthplace of Houts is not known. The *Jackson Herald*, June 24, 1820, gives the birthplaces of the delegates as follows: Virginia, 16; Kentucky, 8; Pennsylvania, 4; Maryland, 4; North Carolina, 3; Missouri, 2; Vermont, 1; Delaware, 1; Tennessee, 1; Ireland, 1; and Wales, 1. The total number of delegates according to that paper is forty-two, which is not accurate. It possibly included the secretary of the convention, but this would not correct its figures on this point.

Maryland; one in North Carolina; one in North Carolina and South Carolina; three in Pennsylvania; one in Vermont and New York; one in New York; one in Ireland; one in Wales, England, Indiana and Illinois Territories; one in upper Louisiana; and one in upper Louisian and Canada.[32] On the basis of former residence and former friendships thirty-six of the delegates naturally fall into five groups. The largest number came from Maryland, Virginia and Kentucky. These three states, closely related in history by the ties of blood, interest, and position, had been the birthplace and home of seventeen delegates. The next group in the order of importance was that from Tennessee and the Carolinas. Its membership included eight delegates, most of whom came from eastern Tennessee. The old Northwest Territory group was composed of five delegates, who came from Ohio, Indiana Territory, and Illinois Territory. The Pennsylvania group and the upper Louisiana group were each composed of three delegates. Thus, instead of there having been a large number of sources of the delegates, we find that all the members of the convention except six can be traced to five

[32] The three delegates from Virginia and the year of their immigration to Missouri were Bates (1814), Evans (1807), Riddick (1803); from Virginia and Kentucky, Boone (1800), Clark (1817), J. Cook (1815), N. Cook, (1799), Hutchings (1800); from Virginia, Kentucky, and Tennessee, Baber (1815), Ramsay (1817); from Virginia and Georgia, Hammond (1804); from Virginia and Tennessee, Lillard (1817); from Virginia and Illinois Territory, Rector (1810); from Virginia and Indiana Territory, Scott (1804); from Kentucky, Cleaver (1816), Green (1817), Ray (1818), Reeves (1819), Sullivan (at least as early as 1815), Wallace (at least as early as 1818); from Kentucky and Indiana Territory, Buckner (1818); from Kentucky and Maryland, Burckhartt (about 1815 or before); from Kentucky, Maryland, and Ohio, Thomas (1810); from Kentucky and upper Louisiana, Dodge (1796); from Tennessee, Barton (1809), Brown (1804), Byrd (1799); from Maryland, Dawson (1800), Talbott (at least by 1815); from North Carolina, Bettis (1806); from North Carolina and South Carolina, Henry (1817); from Pennsylvania, Findlay (1818), McNair (1804), Perry (1806); from Vermont and New York, Emmons (1807); from New York, Heath (1808); from Ireland, McFerron (1802); from Wales, England, Indian Territory and Illinois Territory, Jones (1810); from upper Louisiana and Canada, Pratte (born in Ste. Genevieve). Chouteau was born in St. Louis. The birthplace and former residence of Houts are unknown, also the date of his arrival in Missouri. The dates given as the years of the arrivals in upper Louisiana of the delegates are in some cases our approximations of the exact time. We were in several instances unable to obtain exact information. Each date, we believe, is, however, accurate in stating the year in which a delegate was living in upper Louisiana or Missouri Territory. The error, if any, is in the direction of an understatement rather than an overstatement of the length of time a delegate had been an inhabitant of this Territory.

common sources. We think this is important in an understanding of the personnel of the convention. The delegates were isolated from each other neither before nor after their immigration west of the Mississippi river. Nor were they strangers to each other at either time. They had met in the market, had been companions in the skirmish, had sat side by side in legislative bodies, had known each other as friends or as foes before the bar. Some were related by the bonds of marriage and friendship, others by the ties of business and policy. Although their average residence in upper Louisiana was but ten years, excluding Chouteau and Pratte, who were born in that district, and Houts of whom we could learn very little, their acquaintanceships stretch back into the eighteenth century. And when they met to frame Missouri's first constitution each knew the character as well as the reputation of many of his colleagues.

Some of the delegates were members of the same religious denomination, but our information is too incomplete in this respect to insure accurate generalizations. We do know, however, that the following sects and religions had followers in the convention: Methodist, Baptist, Presbyterian, Episcopalian, and Roman Catholic. Formal religion did not play as important a part in the lives of the men and women of that day as it did later. We do not believe that even half of the delegates were members of any church at this time. This was partly due, in the case of some of the delegates, to a lack of interest in this subject, but was more probably the result of the few, scattered churches and ministers in Missouri Territory. In many cases we are told the religion that was professed by a delegate's parents, who had lived in the settled states east of the Mississippi River, but nothing in regard to the religion of the delegate himself. In other instances we have record of the delegate joining some religious denomination years after Missouri had entered the Union. There was also a number of delegates who were Masons. Alexander Buckner had been the first Grand Master of the Grand Lodge of Indiana Territory, and had organized the first Masonic Lodge in Missouri Territory, "Unity Lodge" at Jackson; Benjamin Emmons, had brought

the first charter for the Masonic Lodge at St. Charles; and Thomas F. Riddick, who together with Alexander McNair, Thomas H. Benton, Edward and Frederick Bates, William G. Pettus and others established the first two Masonic Lodges in St. Louis, was the first Grand Master of Missouri.

Before closing our treatment of the private lives of the delegates we will make a few statements on what is usually regarded as two of the most important subjects in the study of biography,—education and economic position. The educational equipment of the members of the first constitutional convention of Missouri was an honor and an asset to that body. Some of the delegates had received little schooling but most of these had corrected this by a close application to books. Only seven delegates, however, were in this unfortunate class of self-educated men. Information along this line in the case of seven other delegates has not been brought to light. All the remaining twenty-six delegates had received good educations and many of these, *e. g.*, Jones, Scott, McNair, Pratte, McFerron, Barton, Bates, Buckner and others, had received exceptionally fine advantages either in college or under remarkably eminent men.[33] The most highly educated man in the convention, one whom we can correctly style learned, was John Rice Jones. This high educational standard of the convention was naturally reflected in the work of that body. The constitution that it framed has throughout not only a clear, correct style but also, which is more important, it reveals itself as the work of men who were liberal enough to compromise. A constitution of this character is usually insured a longer life than one framed by a body of illiberal even though powerful men.

Another element of strength in the convention was the economic stability of most of its members. All except four of the delegates either enjoyed large incomes from their profession and business, or were possessed of considerable property, principally in land. Even these four, whom we have excepted,

[33] Baber, Chouteau, Clark, Dodge, Hutchings, Ramsay, and Wallace had received little schooling or were self-educated. We could not obtain information in this line relating to Brown, Burckhartt, Byrd, Cleaver, N. Cook, Lillard, Sullivan, and Perry.

were not penniless, but were in only fair circumstances compared to the other delegates. It is interesting to note that two of these four delegates were the only school teachers in the convention, which perhaps explains their economic situation; one was a politician, an even less lucrative office then than now; and one was a small business man who soon developed into a politician and found more wealth in holding public office than in selling groceries.[34] Fourteen of the delegates were among the wealthiest men in the territory, and two of these, Jones and Pratte, probably had few if any equals in this respect.[35] The lawyers and surveyors in the Convention had large incomes as their services were of a high grade and were well remunerated. The business class in the convention was also fortunate in this respect, which was due to the large profits that the successful trader and merchant made on his furs and wares, and to the immense gains that accrued to a progressive mine operator. The agricultural class did not, perhaps, enjoy so large a net income as either of the three classes named, but in property it usually surpassed them. Considering the low average age of the delegates, it is surprising that so many were men of means, and most of them were also self-made men. The average age of these delegates was forty-one years. Only four were sixty years old or over—Hammond, who was sixty-three years; Henry, eighty-four years; Jones, sixty-one years; and Lillard, sixty years. The remaining thirty-seven delegates ranged in age between thirty-one and fifty-nine years except five or six who were thirty years or younger,—Baber, Bates, Clark, J. Cook, Houts (?), and Green. Today it would be almost impossible to elect in any state forty-one of the leading men of that commonwealth whose average age is as low and whose economic position is as high as were the men who framed Mis-

[34] McFerron and Findlay were teachers; Clark, a politician; and Baber a country merchant. Baber later held several public offices and for nearly thirty years was connected with the state auditor's department. He became wealthy; and the story is told that at times he would light his cigar with paper currency to show in what slight regard he held money.

[35] The fourteen delegates who were wealthy were Boone, Brown, Byrd, Chouteau, N. Cook, Dodge, Hammond, Henry, Lillard, Perry, Ramsay, and Riddick. Dodge had, however, lost much of his wealth, but later recovered it in Wisconsin Territory.

souri's first constitution. The reason for such a difference existing is not slow in presenting itself. In the first place, never in the history of this nation, not even excepting the case of California, has such a wealth of natural resources and fertile soil been thrown open to settlement and exploitation as upper Louisiana offered the American settler from 1790 to 1820. Therefore the fearless, shrewd, and energetic young men amassed fortunes in a decade or two. In the second place, the absence of specialization permitted men to enter active life earlier. And even where special training and study were required as in the case of law and engineering, a year or two of application was sufficient to enable one to be admitted to active work at the bar or in the field. The unlimited opportunities that this rich territory offered and the comparative absence of the specialist were, we believe, the main reasons for the delegates averaging low in age and high in wealth. We would not be understood as stating that a wealthy class framed Missouri's first constitution, for this is not true. The delegates were all men of more or less property and some were very wealthy, but they were essentially representatives of the people both by virtue of election and even more truly by reason of birth, upbringing and industry.

CHAPTER VI.

LABORS OF THE CONVENTION.

On June 12th, 1820, in accordance with the fourth section of the Missouri Enabling Act of March 6, 1820, there assembled in St. Louis the delegates that had been elected to Missouri's first constitutional convention.[1] From that date to July 19th, a period of thirty-eight days, these constitution framers met in daily session, except on the five Sundays intervening and on the Fourth of July. The convention thus accomplished its purpose and completed its labors in thirty-two days, or in less than one-half the time necessary for a regular session of a state legislature.[2] The assembling place of the convention was in the dining room of Bennett's "Mansion House Hotel," [3] and the thirty-eight delegates that were present on the first day, having produced their credentials, were sworn, and took their seats.[4]

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[1] *Journal*, p. 3. Throughout this and the succeeding chapter foot-note references to the *Journal* of the convention will be indicated by "J."

[2] On thirteen days the convention assembled at 9 A. M., on one day at 10 A. M., and on the last day at 12 A. M. On three days the *Journal* does not give the hour of meeting. The convention also assembled in the afternoon. See *Mo. Intell.*, July 1, 1820.

[3] This building was erected in 1816 by Gen. Wm. V. Rector, United States Surveyor-General for Illinois and Missouri, for his office and residence, and was situated on the north-east corner of Third and Vine streets. In 1819 it was enlarged to serve as a hotel for Wm. Bennett, who opened house during the summer of that year. From a fine cut of the old Mansion House in Billon, *op. cit.*, p. 397, it appears to have been a large, three-story brick structure. For many years it was used as a hotel and during that time was the scene of many interesting and noteworthy incidents. Theatrical companies performed in the large dining room, and during the early State period it was the principal ball-room of St. Louis. Later it was called the "Denver House" and was sometimes spoken of as the "City Hotel." Between 1880 and 1888 it was removed to make way for a large business house. Its site would now be at the north-east corner of Third and E streets. (*Mo. Intell.*, June 24, 1820; Billon, *op. cit.*, pp. 106, 397f; Darby, *Recollections*, p. 28; Houck, *op. cit.*, III. 249, 256.

[4] *J.*, p. 3. Dodge appeared on June 13; Findlay on June 15; and Scott, on June 16. (*Ibid.*, pp. 5, 9, 10.) The following were also admitted to a seat within the hall of the convention: the governor, secretary, and judges of the superior and circuit courts of Missouri Territory (*Ibid.*, p. 12); Mr. Monroe, brother of and former private secretary to the President of the United States; Mr. Strother, a former member of Congress (*idem.*); and Nathaniel B. Tucker, a former judge of the circuit court (*ibid.*, p. 23.). The proceedings of the convention appear

"MANSION HOUSE" HOTEL

Where the First Constitutional Convention of Missouri met. Courtesy of Hon. Cornelius Roach.

THE "MISSOURI HOTEL"

Where the First State Legislature of Missouri met. Courtesy of Hon. Cornelius Roach.

The *Journal* of the convention does not record any temporary organization, but other accounts of the proceedings of that body reveal the election of Samuel Hammond and Thomas F. Riddick, both delegates, as president and secretary *pro tempore*.[5] Final organization was then effected by the election of a permanent president, a secretary and a door-keeper. David Barton was chosen to the former office by a large majority vote; William G. Pettus was elected secretary; and George W. Ferguson, door-keeper.[6]

Immediately following the permanent organization of the convention, Judge Thomas submitted a resolution, that was adopted, which required each delegate to take an oath before some magistrate of the Territory to support the Constitution of the United States, and also an oath to faithfully discharge the duties of his office.[7] The oaths having been administered by the Hon. Silas Bent, a judge of the superior court, a resolution was submitted by John D. Cook, of Ste. Genevieve, which stated that it was then expedient to form a constitution and state government for the people of Missouri Territory within the boundaries set forth in the enabling act of Congress.[8] This very important resolution was unanimously adopted by the convention. Considering the strong frontier sentiment that up to May, 1820, had favored a new election and a fairer apportionment of delegates, this vote is remarkable. The Boone's Lick people had been protesting for months against the small number of representatives apportioned their and the Salt River districts, and they had persistently advocated a new election of delegates and a new convention based on a more

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to have been of a semi-secret nature; the public was excluded from the sessions but some of the delegates kept their constituents informed of the general business transacted.

[5] *Jackson Herald*, June 24, 1820; Scharf, *op. cit.*, I. 564f.

[6] *J.*, pp. 3f. The voting was by ballot and resulted as follows: for president—David Barton, 28 votes, Richard S. Thomas, 6, John Rice Jones, 3; for secretary—William G. Pettus, 21 votes, Archibald Gamble, 12, Thompson Douglass, 3, Joseph V. Garnier, 2; and for door-keeper—George W. Ferguson, 35 votes, Edward Horrocks, 2. None of the candidates for secretary or door-keeper was a delegate.

[7] *Ibid.*, p. 4. *Cf.* Jameson, *Const. Convs.*, pp. 280ff. This was the first resolution recorded in the *Journal* and was submitted on June 12th.

[8] *Ibid.*, p. 4.

just basis of representation.[9] It speaks well for the wisdom and honor of these western and northern men that, although they could have opposed this measure with much justice on their side, they choose to yield their cause in behalf of the common welfare of the people.[10]

Having decided to form a constitution, the convention at once began its labors. This work was accomplished by committees, which reported to the convention, and divides itself into legislative and administrative acts. The former activity is the more important, but the latter is also significant and interesting. We shall first consider the administrative and routine labors of the convention.

On the first day of the convention a committee was appointed to draft rules for the government of that body.[11] On the following day this committee submitted a short report, consisting of twenty-one sections and containing about nine hundred words, which was divided into four parts, "The Duties Of The President," "Of Decorum In Debate," "Duties Of The Secretary," and "Duties Of The Door-Keeper." This report was adopted by the convention without debate or opposition.[12] Brevity, courtesy and common sense, are its distinguishing features.[13] The President of the convention was

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[9] *Cf. supra, chapter* II; *Mo. Intell.*, June 24, 1820.

[10] The action of the Missouri convention on this point presents a striking contrast to that of the Louisiana constitutional convention of 1811. The latter met on November 4, 1811, and after electing a temporary president, being unable to effect a permanent organization, adjourned to the 18th instant. On reassembling and after the election of permanent officers, the great question of "State or no State?" commanded the attention of all the delegates. Some favored a State, others opposed it. One thought that the people were not instructed in the principles of freedom. Some of the newspaper writers in that Territory declared that the doctrines of liberty and equality were "heresy" and "theoretical stuff," and that property should be the basis for granting the right of suffrage. On taking the vote on this question, thirty-five delegates favored a State, seven opposed it. (Fortier, *Address*, in *Pub. of La. Hist. Soc.*, VI. 40f.

[11] *J.*, p. 4. Thomas, Emmons, Jones, Cook of Madison and Riddick composed this committee. Two of these were lawyers; two, business men; and one, a landowner, was a brother of a lawyer.

[12] *Ibid.*, pp. 5ff. Fifty copies were ordered printed.

[13] A comparison of these rules with those governing the United States House of Representatives at that time shows that the former are simply an epitome of those essential features of the latter that are applicable to a convention. In many sections the language of the two are identical except that in the place of the words "House," "Speaker" and "Clerk," which appear in the former, the

given the great power of appointing all committees, and at no time during the session of that body was this rule changed. As the presiding officer, Barton seems to have given satisfaction to all the delegates; on the last day of the convention a resolution was unanimously adopted tendering him the thanks of the members of that body for the able and faithful discharge of his duty as president. A similar resolution of thanks was at the same time passed regarding the work of Pettus for the faithful and correct manner in which he had served as secretary.[14] A resolution was then adopted directing that the secretary make up the *Journal* of the convention under the direction of the president.[15] This resolution brings to our attention what we regard as one of the most serious criticisms that can be urged against the convention and its officers. We advance this criticism not only for the sake of historical accuracy but, we believe, "The world's memory must be kept alive or we shall never see an end of its old mistakes." [16]

The minutes recorded of the proceedings of a legislative body, and especially of a constitutional convention, can never be too detailed. The very interpretation of a phrase or a clause in a constitution frequently involves a painstaking study of those debates that were held over it by its framers. Not only to the historian, the lawyer, the judge, and to all posterity, is such a detailed account important, but it is equally valuable in enabling contemporaries and the people at large to pass unbiased judgment on the acts of those men whom they have elected to so important a trust. The proceedings of all de-

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words "Convention," "President" and "Secretary," are respectively substituted in the latter. *Cf.* Hinds, *Rules of the House of Rep. 61st Cong.*, pp. 303-474. (Govt. Prtg. Office, Washington, 1910.)

[14] *J.*, p. 48. It is reported that Pettus worked all night of the 18th of July, copying on parchment the enrolled constitution. From the minutes of the *Journal*, however, it seems that Pettus had at least two nights and one day to do this work. (*Cf. J.*, p. 46f.) It is probable that other duties prevented him from accomplishing this until the last minute. Findlay, chairman of the enrollment committee, in reporting to the convention the result of his examination of Pettus' work, said that never in his long experience as a printer had he seen such beautiful and accurate copying, that there was not an interlineation or mispelled word, and that not a "t" was uncrossed or an "i" undotted, throughout the manuscript. (Scharf, *op. cit.*, I. 563f; Houck, *op. cit.*, III. 249f. M. 5.)

[15] *J.*, p. 48.

[16] Reported from speech of President Woodrow Wilson.

liberative bodies and, wherever politic, of administrative boards, should be recorded in the clearest and most minute detail. The cost of printing and clerk hire is too childish an objection to deserve consideration.

Brevity, condensation and omission of detail, is in itself one of the most essential characteristics of a strong, enduring and well-balanced constitution; this quality is, on the other hand, the most vital of all defects in any journal that purports to record the complete history of how a constitution was framed. The Missouri constitution of 1820 is commendable in covering only eighteen and a half printed octavo pages; the journal of the Missouri constitutional convention of 1820 is ridiculously defective in being a pamphlet of forty-eight printed pages, of which only thirty-four contain information on the constitution.[17] From an analysis of the newspaper reports of this convention we are well within the bounds of moderation in stating that the four contests in that body over the questions of salaries for state officers, of the basis of representation in the state senate, of the location of the permanent seat of the state government, and of the state bank, alone, could not have been fully described in a journal of less than three hundred pages. Fundamental as is this defect of brevity in the record that was kept of Missouri's first constitutional convention, the *Journal* would still be acceptable if it possessed the merits of clearness and accuracy. But a hasty examination shows it is lacking in the former quality, and a careful study compromises it in the latter.[18]

The *Journal's* account of the convention's printing contracts is significantly illustrative of these defects, and, as those contracts were purely administrative acts, a discussion of them is appropriate here. The convention's printing was of

[17] The St. Louis edition of 1820 of the constitution is a small size pamphlet, three and a half by five and three-fourths inches, and contains forty pages, of which thirty are devoted to the constitution; the Washington edition, printed the same year, is a full size octavo pamphlet and contains twenty-five pages, of which eighteen and a half are devoted to the constitution.

[18] Our criticism of brevity and obscurity is not confined to the *Journal* of this convention; it is applicable to the *Journal* of the Illinois constitutional convention of 1818. (*Cf.* same as reprinted in the *Journal of the Ill. State Hist. Soc.*, VI. No. 3.)

two kinds, miscellaneous job work and the printing of the constitution and journal. All bids were to be made to a committee, composed of Greene, Rector and Boone; final decision on same was retained by the convention.[19] This committee first considered bids for the job work, and having requested and received one from Henry and Company of St. Louis recommended the acceptance of that firm's offer. The convention accordingly gave the contract to Henry and Company.[20] This far the *Journal* is clear and perhaps accurate, although there were probably some discussion and an aye and and nay vote taken on this matter, both of which the *Journal* fails to record. A criticism does, however, plainly rest against the printing committee in not having also asked for a bid from the rival printing firm in St. Louis, or if it did this, in not having presented two bids—for certainly the old, established firm of Joseph Charless' could and would have competed with that of Henry and Benton's.[21]

On the day following the letting of the job work, the convention, after much discussion, resolved by a very close division vote to have printed twelve hundred copies of the constitution and of the journal. This resolution was bitterly contested and thoroughly aroused the convention, but the *Journal* is singularly silent on this phase of the affair.[22] Two days later, on Saturday, June 17, according to the *Journal*, the printing committee submitted to the convention propositions of Henry and Company for printing twelve hundred copies of the constitution and of the journal, and also submitted a resolution accepting these propositions. The *Journal* then briefly states

[19] *J.*, p. 5.

[20] *Ibid.*, pp. 7f.

[21] Henry and Co. printed the *St. Louis Enquirer* and was controlled by Isaac N. Henry and Thomas H. Benton. Joseph Charless, editor and owner of the *Missouri Gazette*, was hated by many of the delegates and especially by Green and other active politicians of Missouri.

[22] See *Journal*, p. 9, for its account of the proceedings on June 15th. Our account is taken from a letter of the St. Louis correspondent of the *Missouri Intelligencer*. (*Mo. Intell.*, June 24, 1820.) Green, Cook of Ste. Genevieve, and Findlay favored the resolution; Thomas wanted only 300 copies printed; and Heath opposed the resolution. The writer says that some excitement, irregular discussion, and long speeches followed the introduction of the resolution. Two important votes were taken and each showed 20 ayes and 18 nays.

that, after a motion to table this resolution had been negatived, the resolution itself was adopted.[23] Green, chairman of the printing committee, in a letter "To The Voters Of Howard County" dated two months later, said that his committee had also submitted the propositions to Charless for printing, and that the convention had almost unanimously accepted those of Henry and Company.[24] Either the *Journal* is inaccurate or Green is mistaken; we are inclined to think that both trimmed. On the following Monday, June 19, according to the *Journal*, Charless submitted proposals for printing the constitution and the journal, but on motion of Findlay these were ordered to be laid on the table.[25] Charless' bids were just one-fifth those of Henry and Company; this interesting bit of information is not, however, given in the *Journal*; we obtained it from the files of the *Missouri Gazette*, August 2 and 9, and of the *Missouri Intelligencer*, July 1 and August 19.[26] To maintain that the

[23] *Journal*, p. 10. Ramsay made the motion to table the resolution.

[24] *Mo. Intell.*, August 19, 1820.

[25] *J.*, p. 11.

[26] The bid of Henry and Company for printing twelve hundred copies of the constitution was $100.00; that of Charless, $20.00. The cost of printing twelve hundred copies of the journal was to be done at the same rate, in proportion to the extent of the work. The St. Louis correspondent of the *Mo. Intell.*, July 1, 1820, states that Charless' bid was presented June 19, and that it was placed low, at 1/5 a fair price, in order to raise "a false clamour among the people." He also states that the printing contract had been let on June 17, and that Charless, knowing this, sought to embarass the convention without running any risk of being himself embarressed. Charless replied to this correspondent in two editorials which appeared in the *Mo. Gazette*, Aug. 2 and 9, 1820. He stated that the printing committee had never requested bids from him; that he had not known of the appointment of this committee until after it had presented the proposals of Henry and Co.; that when his proposals were handed to the committee by Boone, who had received them from some member, Green was displeased and wished to know who had informed *old Charless*; that at that time the contract had not yet been made and was still under discussion; that notwithstanding the fact that his bid was only one-fifth that of Henry and Co., the contract was awarded the latter, on the recommendation of the committee; and that he had his bid again presented to the convention by a member, but it was tabled. Charless also explained how he could afford to print twelve hundred copies of the constitution for $20.00 and still make a profit; all the newspapers would print the constitution, hence no new labor of composition would be required to print it for the convention; the only extra expense in printing twelve hundred copies would be the following—paper, $6.25, press work, $4.00, folding, stitching, covering, and coloring, one day for a boy, $1.50, and colored paper for covering, $1.25—all of which would amount to $13.00, thus leaving a profit of $7.00 on his $20.00 bid. Charless further accused Green and the convention of giving Henry and Co. at least $1,500 for all the printing, which he, Charless, would gladly have done for $300.00. He

matter is unimportant and did not warrant recording, is to lay the *Journal* open to the severe criticism of having covered one and one-half pages of its scanty forty-eight pages with extraneous minutes on the printing by Henry and Company. We cannot, however, see how the $20.00 bid of Charless was in any respect less important than the $100.00 bid of Henry and Company.[27]

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concluded his arraignment with these biting words: "It is part of the question of *high salaries*—no one shall do any thing for the public except he will take three times as much as he ought—No one shall serve the public unless he plucks the goose as much as possible."

Green in his race for representative from Howard county in 1820, was attacked by his enemies for this little piece of politics of his at St. Louis, and he must have feared the effect of the charges. For on August 19th, there appears in the *Mo. Intell.* a letter of his addressed "To The Voters Of Howard County," which attempts to reply to the statements of Charless and others. A hasty examination of this letter clears both Green and the Convention of all criticisms regarding the convention's printing and further places Charless in the hole for misstatements and for playing low politics: a careful analysis of this epistle, a comparison with it of the *Journal*, of the editorials of Charless, and of the writings of the St. Louis correspondent of the *Mo. Intell.*, and an appreciation of the fact that it was an attempt to answer certain direct and specific charges, convict Green, some members of the convention, and the *Journal* of wilful and conscious irregularities in this matter. The voters of Howard county also possibly shared this latter conclusion as Green was very decisively defeated at the August election.

[27] The convention later decided that the constitution be translated into the French language, and that 300 copies thereof be distributed for the use of the French inhabitants. Pratte, Chouteau, and Riddick were appointed to supervise this work. (*Journal*, p. 46.)

It was first decided to dispose of the 1,200 printed copies of the constitution that were in English as follows: 380 copies were to be deposited in the archives of the state, subject to the future disposition of the legislature; and 20 copies were to be given to each delegate, for the use of his constituents. (*Mo. Intell.*, June 24, 1820.) This was changed by a resolution, introduced by Bates, which provided that the President of the United States, the respective heads of the departments of the Federal Government, the chief executive of each state and territory, the Speaker of the House of Representatives and the President of the Senate of Congress, each receive one copy of the constitution, that 100 copies of the constitution and the journal be deposited in the office of the Secretary of State of Missouri, and that the remaining copies of both be distributed among the delegates. (*Journal*, p. 47.)

We have seen only one copy of the original edition of the constitution printed in St. Louis, and one copy that was printed in Washington (1820). These are both in the *State Hist. Soc. of Mo.* We have never seen an original of the Journal and in our work used a photo-facsimile reprint made in 1905 by the Statute Law Book Company, Washington, D. C.

The final superintendence of the printing of the constitution was placed in the hands of Findlay. (*Journal*, p. 47f.) On the last page of the St. Louis edition of the constitution is found the certification of J. S. Findlay, under date of St. Louis, Aug. 3, 1820, declaring that the constitution and "Ordinance" as printed agreed with the original roll. On the last page of the Washington edition is found a similar certification by David Barton, under date of St. Louis, September 27, 1820.

The *Journal's* record of the printing contracts is singular, but its account of the resolution that provided for the pay of the members and officers of the convention, is unique. The latter subject, although not considered until late in the session, secured the attention of the delegates on seven days.[23] The *Journal* contains a copy of the original resolution, presented by Ramsay, on this matter; gives the names of the members of the committee appointed to report on this resolution; and states that the committee submitted this resolution as an *ordinance*, thus necessitating honoring it with the signatures of the president and secretary of the convention. The *Journal* further informs us that the ordinance after two readings was committed to the committee of the whole, was then reported with amendments to the convention, was agreed to and ordered to be engrossed for a third reading, was again agreed to by a division vote,—the individual ayes and nays being given—, was reported on favorably by the committee on enrollments, and was finally signed by Barton and Pettus. We would logically expect that since so much pains was taken to relate the complete story of this simple administrative act, the *Journal* would inform us what its core was, *i. e.*, what pay the president, the secretary, the doorkeeper, and the delegates received *per diem* for their services and what mileage was allowed them. Or, if the *Journal* did not, then surely this ordinance, which was raised by the convention to the dignity and authority of a fundamental law, would have found a place at the end of the pamphlet that contains the constitution, the ordinance of acceptance of the conditions imposed by Congress, and the certification of Findlay that these two documents had been correctly printed. But neither pamphlet contains the slightest hint of the compensation received by the officers and members of this convention. We do not, therefore, conclude that the compensation ordinance necessarily allowed exorbitant *per diem* salaries and mileage; we do, however, criticise the *Journal*, *i. e.*, Pettus and his director, Barton, for recording this ordinance so minutely and finally letting the people of Missouri hold the bag.

[23] *Journal*, pp. 30f., 33, 38, 42ff., 47f.

This ordinance also provided for other expenses of the convention.[29] It is impossible to ascertain what all these other expenditures were, but it is certain that they included printing bills, contingent expenses of the secretary, and furniture and rent accounts. We estimate that this ordinance carried an appropriation of about $8,800.00.[30] This amount represents practically the total cost to the people of Missouri of their first constitutional convention.[31] As no criticism of this expense is met with in the newspapers of that day, we may conclude that the inhabitants of the new State were willing to pay so low a bill. Compared with the cost of even the first session of the first General Assembly of Missouri, it was a very small expenditure. In fact Missourians paid about three times as much for their first volume of session laws as they did for their first constitution.[32]

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[29] *Ibid.*, p. 48.

[30] The compensation allowed the delegates was probably no higher than that given to the members of the first state General Assembly of Missouri at its first session, since both the convention and that legislature had unlimited legal power over this subject. (*Cf. Mo. Const., 1820*, Schedule, sec. 6. The members of the Missouri constitutional convention of 1845 and 1875 received the same compensation as was allowed members of the legislature. See *Laws of Mo.*, 12th G. A., 1st sess., pp. 26f., act of Feb. 27, 1843; act of March 25, 1874, sec. 4, in *Const. of Mo. 1865*, compiled by McGrath, 1875, pp. 48ff., bound in "Missouri Constitutions 1845-1909.") The latter body allowed each of its two presiding officers and of its two clerks five dollars a day, and each member of both houses four dollars a day and mileage at the rate of three dollars for every twenty-five miles in coming to and returning from the session. It consisted of fourteen senators and forty-three representatives, a total of fifty-seven members, was in working session about two and a fourth times as long as the convention, and appropriated twenty-five thousand dollars for salaries and mileage of its members and twelve hundred dollars for printing. If the convention allowed its members a similar *per diem* salary and the same rate of mileage, then these two items in the convention's budget amounted to approximately $8,000.00. The printing bill of the convention was, we believe, about $500.00. (*Cf.*, the *Journal*, pp. 8, 10 and the letter of Green in the *Mo. Intell.*, August 19, 1820. We cannot accept Charless' statement that the total printing bill would be about $1,500.00; according to contract, it could not have been over $500.00.) The expense for furniture was possibly $100.00, and the secretary's contingent bill was $26.25 (Scharf, *op. cit.*, I. 536). The rent of the dining hall and two rooms in Bennett's Hotel was $30.00 a week or about $165.00 for the thirty-eight days. (*Journal*, pp. 4f. The two rooms were probably used by the convention as committee rooms.) This makes a total expense of $8,791.25, which, we believe, is a close approximation.

[31] It does not, however, include the expense incident to the election of the delegates.

[32] *Laws of Mo. 1820, 1st G. A., 1st sess.*, chap. 17, pp. 34f.; chap. 45, pp. 82f.

In pursuing this study of Missouri's first constitutional convention and while examining to some extent the other constitutional conventions and constitutions

This concludes our consideration of the administrative and miscellaneous acts of the convention. The few that have not been discussed are either of slight interest and importance, or their purpose is not clear.[33]

We shall now consider the legislative work of the convention. This work consisted of drafting and adopting two organic laws—an ordinance accepting the five propositions and the two provisions that were set forth in the sixth section of Missouri's Enabling Act, and a constitution, which governed the people of this state for nearly forty-five years. Both became binding on the people of Missouri through the mandate of the convention; neither was ever submitted to a popular vote. Contrary to current opinion, however, and even to the statements of some scholars, there is, we believe, no obvious naturalness or necessary conformity to the spirit of the times

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of this and other states, we have frequently been confronted with questions that involved comparisons of constitutional law and ordinary or session law, and of constitutional conventions and ordinary legislative bodies. First necessity and finally interest have directed our attention to this phase of our subject, and we hope to be pardoned for the following extraneous remarks: Are constitutions more easily framed than ordinary laws? If so, is this owing to the abler men in constitutional conventions; to the absence of veto and constitutional limitations, except those in the United States constitution; to the single house plan of organization; or to the smaller membership? If not, why does it take less time to draft constitutions than session laws, for it is a fact that Missouri's first constitutional convention was in session only thirty-eight days of which only thirty-two were working days; that this State's second convention, 1845-1846, met fifty-eight days, of which not more than forty-eight were working days; and that the last convention, 1875, met eighty-nine days, of which only seventy-six were working days? Is not this celerity in drafting constitutions due to the same factors that serve to explain the *simplicity* and *ease* of framing constitutions?

[33] On June 19, McFerron submitted a resolution providing for the appointment of a committee to draft a memorial to Congress in behalf of certain persons claiming preemption rights. This was supported by Thomas and Buckner; and opposed by Bates and Evans on the ground that it did not fall within the powers and duties of the convention. It was negatived. (*Journal*, p. 11; *Mo. Intell.*, July 1, 1820.)

On June 27, Jones, Talbot and Chouteau, were appointed on a committee to obtain from the Territorial Auditor a statement of the taxes assessed on and paid by the counties of Missouri Territory into the Territorial Treasury for 1817, 1818, and 1819. (*Journal*, p. 14.) This committee reported on July 1, but it is not known what this report contained. (*Ibid.*, p. 19.) The purpose of the convention was undoubtedly to obtain a knowledge of the state's revenue in order, thereby, to estimate accordingly the salaries of the new state officials.

On July 5, a committee was appointed, composed of Jones, Rector and Wallace, to ascertain the quantity of Missouri land sold by the United States. This committee reported on the 8th instant, but its report is not given. (*Ibid.*, pp. 25, 29.)

in the refusal of Missouri's first constitutional convention to submit the fruits of its labors to the people.

Of the twenty-four state constitutions in force in 1820, six had been submitted, and one of these was in the south.[34] From 1775 to 1820 inclusive, there had assembled forty-two conventions, state and national, that had either framed or amended constitutions. Of this forty-two conventions, fifteen had submitted their work to the people or to their representatives, twenty-seven had not. If the purely revolutionary bodies of 1775 and 1776 are eliminated, the number of submitting conventions remains fifteen but the number of non-submitting conventions is reduced to seventeen.[35] Moreover, of all the constitutions and constitutional revisions made between 1820 and 1830 inclusive, Missouri's was the only one that was not submitted to the people.[36] From these generalizations alone, it seems logical to conclude that the principle of submitting constitutions to the people or their representatives, was firmly established in the United States from the very inception of our government. Although down to 1820 the non-submitting convention was slightly the stronger of the two in the total number of precedents, not one of these non-submitting conventions was as influential, as an historical example, as the submitting convention of 1787 that framed the Federal Constitution. Moreover, during the decade from 1820 to 1830, the relation of the number of submitting conventions to the number of non-submitting ones, was as five to one. Why, then, did the Missouri convention of 1820 follow the non-submitting

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[34] Conn. (1818); Me. (1819); Mass. (1780); Miss. (1817); N. H. (1791); and Vt. (1792, 1820). See Jameson, *Const. Convs.*, pp. 496ff., and Appendix B, pp. 643ff.

[35] These submitting conventions were: Continental Congress (1775-81); Federal Convention (1787); Ga. (1788); Me. (1819); Mass. (1778, 1779, 1780, 1820); Miss. (1817); N. H. (1778, 1781, 1791); Vt. (1785, 1792, 1820).

The non-submitting conventions were: Ala. (1819); Del. (1792); Del., Ga., Md., N. J., N. Y., N. C., Pa., and Va. (1776); Ga. (1795, 1798); Ill. (1818); Ind. (1816); Ky. (1792, 1799); La. (1811); Mo. (1820); N. H. (1775); N. Y. (1801); O. (1802); Pa. (1789); S. C. (1775, 1778, 1790); Tenn. (1796); Vt. (1777).

The failure of the revolutionary conventions of 1775 and 1776 to submit their labors to a popular vote, was probably due to the lack of time and to a fear of a large adverse vote from the Tories in many of the colonies.

[36] Mo. (1820); Mass. (1820); N. Y. (1821); R. I. (1824); Va. (1829); Vt. (1820, 1827). *Ibid.*

class, if the principal of submission had been so firmly established in our political system? We believe that there was a number of influences operating in Missouri against submission: there was no demand on the part of the people for such a referendum or adoption; the people of Missouri Territory wanted an immediate state government without further delay; the delegates possessed the confidence of their constituents; the constitution was generally acceptable; submitting conventions were then the exception in the south; and finally, the convention itself was undoubtedly opposed to such a course. Again it is probable that had the constitution and the ordinance of acceptance been submitted to a popular vote, both would have been adopted by overwhelming majorities. The former would have had little opposition: the latter by its very nature would have received the support of all. It may not be altogether superfluous to add that the Enabling Act by not requiring the submission of these two laws to the people and by not even implying such submission, was possibly an influence in itself against such a course.

The ordinance of acceptance is based almost wholly on the sixth section of the Missouri enabling act of March 6, 1820. As this act has been considered,[37] we will not again analyze it. It will be recalled that section six of this act set forth five propositions or five proposed United States donations to the new State, for the free acceptance or rejection by the convention. If accepted, these propositions were to be binding upon the national government, but they were conditioned upon two provisos: the convention was to provide by an ordinance, irrevocable without the consent of the United States, (1) that all public lands sold in Missouri by the United States after January 1, 1821, were to be free for five years after date of sale from all state, county and township taxes; and (2) that bounty lands, granted for military services during the war of 1812, were to be similarly exempt from taxes for three years from date of the patents providing these lands were held by the patentees or by their heirs.

[37] See *supra, chap.* II. For a copy of the ordinance, see *Appendix* IV.

On the third day of the session of the convention, a committee was appointed to consider the expediency of accepting or rejecting these five propositions and two provisos.[38] Two days later, this committee made its report, which was favorable towards accepting the propositions and provisos of Congress, and submitted the draft of an ordinance relating to these subjects. Both the report and the ordinance were unanimously accepted by the convention, and on June 17th the ordinance, after a second reading, was committed to a committee of the whole house.[39] While before this committee the ordinance received considerable attention.[40] Scott at once introduced a substitute ordinance, in which were recited *all* the conditions contained in the act of Congress and declaring the assent of the convention thereto. This substitute included everything that was contained in the original ordinance, *i. e.*, those provisions that composed the sixth section of the Enabling Act, and also enumerated and assented to those conditions that were set forth in the second and the fourth sections of the act of Congress. Scott's contention was that this ordinance should assent not only to the five propositions and to the two conditions in the sixth section but also to those conditions in the second and fourth sections. Heath, chairman of the committee that framed the original ordinance, favored the substitute so far as it was based on the sixth section, but opposed those clauses that were founded on the conditions in the second and fourth sections of the enabling act. Heath objected to including in the ordinance anything relating to the free and common navigation of rivers or to the equal taxation of the lands of non-residents and residents. Buckner also took this position, and declared that the point of taxation was one which involved Missouri's sovereignty and over which Congress had no power to dictate. In a very able speech Scott defended the two

[38] *Journal*, pp. 7f. Heath, Ray and Buckner were appointed on this committee.

[39] *Ibid.*, pp. 9ff. The ordinance reported by this committee is practically the same as that part of the one finally adopted which begins with the words, "Now, this convention, for and in behalf of the people" etc., and which closes with the words "from and after the date of the patents respectively."

[40] *Mo. Intell.*, July 1, 1820. The ordinance was discussed all Monday afternoon, June 19th.

points objected to by Heath and Buckner. He appealed to the convention's sense of justice on the taxation proviso, defending this proviso with many precedents drawn from American state history, and urged its inclusion in the ordinance from the standpoint of policy. Bates, in a speech of considerable length, opposed the additional provisos in Scott's substitute and especially the one that related to taxation. He said that he regarded Scott's historical examples as being inapplicable in this case, that he would never consent to purchase Missouri's admission into the Union at the price of her relinquishing so important an attribute of state sovereignty, and that he not only favored placing this power in the hands of the Missouri legislature but thought that it might be well for that body to actually impose a higher tax on non-resident than on resident land-holders. Bates concluded by offering the following amendment to the first section of the substitute, which section, we believe, contained the provisos relating to the free and common navigation of Missouri rivers:[41] "provided that Congress be requested so to modify the third proposition as to allow the whole of the sum of five per cent to be appropriated within the state to the construction of roads and canals, and promotion of education, under the direction of the legislature thereof." This amendment having been agreed to, the committee of the whole took up the consideration of the second section of the substitute ordinance. Green delivered two speeches in an attempt to slightly amend this section, which related to the equal taxation of non-resident and resident land-holders. Emmons, Scott, Cook of Ste. Genevieve, and Barton opposed and finally defeated Green's amendment. Barton and Thomas then opposed the entire section and succeeded in having it struck out. The substitute ordinance as amended by Bates was reported to the convention, concurred in, and ordered to be engrossed. On July 14th the convention agreed to the engrossed ordinance on its third reading,[42] and three days later, after an attempt, made by McFerron, to defeat it had failed, it was

[41] It is not clear what was the first section of Scott's substitute.
[42] *Journal*, p. 44.

again carried in the affirmative.[43] After having been correctly enrolled, the final draft of the ordinance was signed by Barton and Pettus on the last day of the session of the convention.[44]

We have treated this subject at greater length than is customary; but to us such treatment appears clearly warranted. This ordinance is one of the few organic laws that have applied to Missouri; and further, it is today the second oldest fundamental law that is in force in this state. The acts of Congress passed between 1804 and 1820 that applied to the government of upper Louisiana and Missouri Territory, were superceded by the Missouri constitution of 1820; the latter by the constitution of 1865; and this in turn by the present constitution of 1875. But, the ordinance of July 19, 1820, passed by the convention of that date, was "irrevocable except on the consent of Congress." Finally, this ordinance although not a requisite for the admission of Missouri was necessary if that state expected to receive national land grants and money aid for internal improvements, education and a seat of government.

Its authors in the convention were Heath, Scott, and Bates. Its passage in the convention reveals several interesting side lights on that body. The delegates favored the strictest and most limited interpretation of those conditions or provisos imposed on Missouri by Congress that were to be included in the ordinance; and, on the contrary, though quite naturally, they requested Congress to broaden the scope of her donations. The convention refused to declare by an irrevocable law that Missouri would never impose a higher tax on non-resident land-holders than on resident land-holders,[45] but at the same time that body was practically a unit in placing in that ordinance a plea for Congress to grant more money for roads and canals in Missouri. We do not believe that the convention willfully

[43] *Ibid.*, p. 46.

[44] *Ibid.*, p. 46ff.

[45] This prohibition and the proviso relating to navigable rivers were placed on the general assembly of Missouri in Article X of the constitution of 1820. That article, however, contained no clause which exempted it from being subject to amendment the same as the other provision of the constitution; nor is such a proviso clause contained in that article which provided the manner of amending the constitution.

tried to antagonize Congress on the taxation question, it seems to us that the proviso of Congress on this point was inherently an unpopular one to the delegates and their constituents. The non-resident holder of Missouri land escaped at least one arduous, dangerous, and not inexpensive duty: He was free from militia service in this state. Furthermore, he was as a rule not only an unprogressive factor in the state but frequently a serious drawback to its development. The curse of land speculation was a serious problem in those pioneer days. The messages of the first governor of Wisconsin Territory are full of this subject.[46] This mania of legalized gambling had possessed Missouri from the very inception of American rule. Disastrous as were its evils when confined to resident landholders, these evils never aroused that wave of popular disfavor and positive hatred that was directed against the absentee landlords. The former at least shared the burdens and dangers of a frontier life; the latter were regarded, justly or unjustly, as profitting by the pioneers' industry without contributing anything to the development of the state. Even such a conservative and temperate minded man as Bates apparently thought that equal taxation under such circumstances was unjust. With Bates stood Barton, Heath, Buckner, and Thomas, and the convention itself, while only two, Green and Scott, spoke in favor of this proviso. The least that the convention could do and still comply with the demands of Congress, was exactly what it did: The taxation and navigation provisos were inserted in the constitution, but nowhere in that document were these provisos or any other provisos exempt from the ordinary process of amendment.

In framing the constitution the committee method was adopted by the convention. The advantages of this method over the assembly method are so well known that a detailed exposition of it is hardly necessary. The former manner of working is almost imperative in any large deliberative body and lends itself very conveniently to the needs and wishes of a small assembly. By a division of labors and by a specialization of work the committee system enables such a body to

[46] See Shambaugh, *Messages of the Governors of Iowa*, I.

progress with greater dispatch, to handle more questions within a limited time, and to perform a higher quality of work. This system does not necessarily carry with it the elimination of deliberation on the part of the body that appoints or adopts it; the opposite is generally the rule. The assembly plan of procedure does eliminate the committee, but the committee plan is essentially a complement to, and not an absorber of, the assembly.

The first resolution submitted to the convention on this subject was proposed by Bates. He favored the appointment of a single committee to draft a constitution.[47] The convention refused, however, to adopt this measure.[48] On the same day, June 13th, a resolution was proposed by Thomas, and carried, that four committees, each consisting of three members, be appointed by the president of the convention to do the following work: one committee was to draft the legislative department, on it were appointed Jones, Emmons and Clark; one, the executive, composed of Rector, Cook of Madison and Evans; one the judiciary, composed of Thomas, Cook of Ste. Genevieve and Bates; and one, the bill of rights and other parts not before mentioned, composed of Ramsay, Hammond and Green.[49] We do not hesitate to say that, including Barton, who undoubtedly exercised a great influence over the members of all the committees by virtue of both his ability and his power of appointment, most of the influential men of the convention were placed

[47] *Journal*, p. 5.

[48] Bates left blank the number of committee places. There are, we believe, only two advantages in Bates' plan over the assembly plan: the constitution if framed by one committee would probably have been more unified in both subject matter and style, and would probably have been framed in less time. There is also this possible item in its favor, that if the committee was composed of the ablest men of the convention, the constitution so framed might have been a stronger document. We do not, however, regard this last as a necessary conclusion even if the committee had been composed of only one member and he, a Bates, a Barton, a Benton, or a Jones. On the other hand, Bates' plan carries with it some definite objections: if the committee is small, too few men are invested with too much power, and, further, it cannot be representative of the state at large in those great fields of legislation set forth in a constitution; if the committee is large, then it either loses that celerity of action and power of specialization which are the foundations of the committee system, or it divides itself into several sub-committees. The convention was doubtless aware of these objections and voted accordingly.

[49] *Journal*, pp. 5, 7.

on these four committees.[50] Although ten of the fifteen counties of the territory were represented on these four committees, only three of the counties were north of the Missouri River.[51] And of the twelve committee places only four were held by the delegates who represented that half of Missouri's population that lay north of the River and in the county of Cooper. Further, only one chairmanship of these four was given to this section. This unfairness was partly offset, however, by the fact that although the northern and extreme western counties were allowed only four representatives on these committees, these four controlled two committees.[52] But on the other two committees these counties had no representatives whatever to voice their wishes.

The four committees appointed on Tuesday, June 13th, reported to the convention on Friday, June 16th, the several parts of the constitution that they had drafted.[53] Cook of Madison then made a motion that the several reports be committed to a select committee composed of one member from each of the four committees, for the purpose of forming these reports into one consistent whole. Thomas asked for the reading of these reports, that the convention might see the necessity of the commitment. This request very singularly, we think, appears to have aroused much discussion among the delegates. Remarks were make by such eminent men as Thomas, Heath, Green, Cook of Madison, Cook of Ste. Genevieve, Buckner, Emmons and Bates. An entire day was spent considering this very commonplace request, which in itself if

[50] Scott had not then taken his seat, the appointment of Rector and Bates from St. Louis naturally excluded McNair and Pratte, since the appointment of more than two members from one county would probably have aroused criticism.

[51] Of the twelve committee places on these four committees, eight were held by delegates from Washington, St. Charles, Cooper, Madison, Ste. Genevieve, Montgomery, Jefferson, and Howard; two, from St. Louis; and two, from Cape Girardeau. It is singular that New Madrid was the only county having two or more delegates that was not represented on these committees. No county's delegates constituted a majority of any committee. See *supra*, *Chap.* V. on the occupations represented on these four committees.

[52] These two committees were the legislative and bill of rights committee.

[53] *Journal*, p. 10. The chairman of these committees presented their reports severally except in the case of the executive committee, whose work was reported by Cook of Madison and not by Rector. *Mo. Intell.*, June 24, 1820.

granted would probably not have taken over an hour's time. We can see no sensible reason for any of the delegates opposing Thomas' motion unless it was either a sincere desire on the part of some to facilitate business and not to get involved in debate so early in the session, or the fear of others that the convention would be too thoroughly enlightened, either favorably or unfavorably, regarding certain parts of the constitution before these parts could be successfully opposed or defended by some leaders of that body. The opponents of Thomas' motion were finally successful and the reading of the four reports was dispensed with: Cook's motion for a select committee was adopted and Jones, Evans, Cook of Ste. Genevieve and Ramsay, were appointed on it.[54]

We regard the work accomplished by the convention on this day, June 16th, as significant. First, certain leaders in that body then actually accomplished the remarkable feat of persuading the delegates not to hear the reports of those committees that they had authorized and that had been appointed, to draft a constitution for Missouri. These reports were never read or printed. Their contents were as much a sealed book to the large majority of the delegates as they are to us. The original draft of Missouri's first constitution will never be known. It is certain that a determined fight was made to accomplish this virtual suppression of these original reports. We believe that this suppression was a thoroughly and deeply planned, an ably and successfully executed, step towards obtaining the substantial adoption of Bates' defeated resolution of June 13th. What could not be won directly was to be gained indirectly. Our conviction is strengthened not only by what immediately followed on June 16th, but also by this, that the report or reports on this constitution of no other committees, however insignificant, were ever recommitted to a new committee without either having previously been read and acted upon by the convention or printed for the use of its members. Second, on this day a small committee was decided upon and appointed, which in actual power was simply Bates' original

[54] *Mo. Intell.*, June 24, 1820; *Journal*, p. 10. The *Journal* reveals nothing regarding this struggle; we obtained our account from the *Mo. Intell.*

committee resurrected from its grave of defeat.[55] The author of the former was Cook of Madison, of the latter, Bates; the one was called a select committee and its powers and duties in drafting a constitution were practically unlimited, the other was not given a name and its powers were to draft a constitution. This slight and wholly superficial difference was sufficient, aided undoubtedly by new promises and combinations, to snatch victory from defeat. Finally, the select committee appointed on this day was singularly unrepresentative of the districts of Missouri Territory. This committee of all the committees appointed during this convention, should have been the most representative of the several parts of Missouri Territory. The unlimited power vested in it to draft a constitution raised it above all other committees in importance. It was in essence the four original committees contracted to one committee and reduced to four members. But while a certain amount of injustice to the western and northern counties was apparent in the membership of the four committees, this injustice was equity itself when contrasted with the obvious discrimination shown in the membership of the select committee. In spite of the fact, more or less appreciated by the convention, that half of Missouri's population was in the tier of northern and far western counties in 1820, these counties had only one delegate on this select committee, while the other half of the territory had three delegates on it. Another significant feature regarding the composition of this all powerful committee is this, that of its four members three were lawyers of the highest ability and influence. In other words, of the nine lawyer delegates, one appointed the committee that made the original draft of Missouri's first constitution and three absolutely con-

[55] According to the *Journal*, p. 10, the reports of the four committees "were recommitted to a select committee." It is true that the correspondent of the *Mo. Intell.*, June 24, 1820, states that Cook of Madison, who was the author of the select committee motion, favored this select committee in order to have it unify these four reports. But it is quite improbable that this purpose or argument of Cook's was incorporated in his motion. And, further, the *Journal* is very explicit in all other cases in stating the duty of each committee. Its silence here can be attributed only to this, that the duty of the select committee was not set forth in the motion that created it. And, finally, the ignorance of the convention regarding the contents of the reports of the four committees, enabled the select committee to alter at will those reports and even frame a practically new draft.

trolled that committee. Our summaries are even these: (1) fifty per cent of Missouri's population in 1820, the extreme northern and western portions, was given a representation of only twenty-five per cent on the select committee; the other fifty per cent of Missouri's population, the southern portion, had a representation of seventy-five per cent in this same body: (2) twenty-two per cent of the delegates, the nine lawyers in the convention, was given a representation of seventy-five per cent on the select committee,—an overwhelming working majority in any business—; the other seventy-eight per cent of the delegates, the business, agricultural, and professional men, had a representation of only twenty-five per cent on this committee.[56]

The ability of the select committee to accomplish work with dispatch, is seen in the fact that it reported to the convention on the day following its creation.[57] Fifty copies of this report were ordered printed for the use of the delegates; but since not one of these pamphlets has been preserved, and, owing also to the unsatisfactory and incomplete character of the *Journal*, it is impossible to obtain the slightest clue as to the contents of this report. The different parts of this report were considered from time to time by the convention resolved into a committee of the whole. In this committee the constitution was discussed section by section, and it is regrettable that no minutes of these debates were kept either by some member or by the secretary of the convention. As articles of the constitution were decided upon by the committee of the whole, they were reported by it to the convention for a third reading.[58] On

[56] *Cf.* supra, chap. V., on the personnel of the convention. We are unable to explain why Rector and Thomas, the respective chairman of the executive and judicial committees, were not appointed on this select committee. It seems that this would have been a natural selection and in the case of Ramsay and Jones, the respective chairmen of the legislative and bill of rights committees, this plan was followed. It is not improbable that both Rector and Thomas were not personae gratae to Barton, and Thomas' request to have the four reports read to the convention seems to be in line with this assumption.

[57] *Journal*, p. 10. The *Journal*, here speaks of the select committees as one "appointed for the purpose of revising and consolidating the different reports made to the convention relating to the constitution to be formed."

[58] The *Journal* is not clear in its account of this last point. The minutes of the proceedings of the convention seem to indicate that the committee of the whole reported directly to the convention; the duty of the committee on style,

this third reading the convention considered the constitution section by section. The *Journal* for the first time now throws a little light on the different parts of that instrument; but this light is provokingly unsatisfactory. As no section of the constitution is printed in the *Journal* unless some amendment was proposed and frequently even then only the amendment is given, it is difficult if not impossible to determine the substance of many of the sections either as reported by the committee of the whole or as adopted at this time by the convention.[59]

On June 29th Bates submitted a resolution that provided for the appointment of what might be appropriately called a committee on style. Bates' resolution was adopted by the convention, and Bates, Cook of Ste. Genevieve and Findlay, were appointed on the committee.[60] The duty and power of this committee on style, as set forth in the resolution, were to revise, arrange and transpose, if necessary, the sections of the constitution as passed by the committee of the whole without altering in any respect the substance thereof. It was, therefore, purely a committee on style or revision, a body possessing no original legislative power. Although the provisions of the resolutions relating to this committee on style were clear, it does not appear that this committee followed them. In the first place, it did not revise the constitution after the action of the committee of the whole but considered that document after the convention had passed upon it on its third reading. We do not, however, see any special significance in this departure from instructions. In the second place, although the committee on style was forbidden to alter the substance of any section of the

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which will next be considered, was "to revise, arrange, and where it may be necessary, transpose the sections of the constitution, as the same have passed the committee of the whole without altering in any respect the substance thereof." (*Journal*, p. 15.) It does not appear, however, that this new committee, the committee on style, ever revised the reports of the committee of the whole until after these reports were acted upon by the convention.

[59] We have supplemented the *Journal's* account of the drafting and adopting of the constitution with the accounts in the Missouri newspapers of that period. One of our greatest losses is the two missing issues of the *Mo. Intell.* of July 8th and 15th, 1820, which would undoubtedly have cleared up several of our problems in this line. The files of the other Missouri newspapers covering the months of June and July are either incomplete or contain little information on the workings of the convention.

[60] *Journal*, p. 15.

constitution, it appears that this was done in several instances. The comparative ease with which this alteration could be accomplished made this prohibition of little actual worth. The constitution as acted upon on its third reading by the convention was not printed, nor was the constitution as reported by the committee of the whole printed; the first printed draft of the constitution was that reported by the select committee, which draft had been changed in the committee of the whole and later in the convention. The failure of the committee to print the constitution as it was handed over to the committee on style, enabled that committee to exercise powers that were not granted to it. This last function was rendered even more secure by the total absence of any record of the changes made by the committee of the whole on the report of the select committee and by the incomplete, almost obscure, minutes, kept by the secretary, of the proceedings of the convention on its consideration of the report of the committee of the whole, combined with those very simple and apparently unimportant, but really most significant, powers of the committee on style to revise, arrange, and, if necessary, *transpose* the sections of the constitution. By these powers, the committee on style, was easily enabled to so rearrange the sections that in the absence of a printed copy of the constitution as reported either by the committee of the whole or by the convention, few delegates could have detected all the changes made.

The committee on style reported from time to time to the convention the various articles of the constitution that had been submitted to it for revision. Although nearly all of the constitution passed through the hands of this committee, its report on only three articles was ordered printed,[61] and not one of these printed copies has been preserved. Moreover, it is, with very few exceptions, impossible to obtain from the *Journal* a complete knowledge of what these various reports were. The same obstacles here confront the research worker that are met with in considering the reports of the committee of the whole to the convention. There is, however, this ad-

[61] These were on the legislative, executive and judicial departments. *Journal*, p. 27.

vantage in analyzing the report of the committee on style: In some instances where the text of a reported section is not given in the *Journal* and that section is not later changed by the convention, its wording is the same as was finally inserted in the constitution. The difficulty lies in ascertaining the identity of the number of the section as reported and its number as adopted. In nearly all other cases the contents of a reported section is given in full in the *Journal, i. e.*, in those cases where amendments to sections were proposed or adopted by the convention.

The committee on style was one of the two most important committees that framed Missouri's first constitution. However, it did not, we believe, make any important alterations in several articles of that instrument, although these articles were reported upon by it in a manner similar to the method pursued in handling the body of the constitution. The parts we refer to are: "Article VIII. of Banks," "Article XI. Of The Permanent Seat Of Government," and the "Schedule" of the constitution. The importance and publicity attached to these three subjects rendered any shadowy alteration of their contents a perilous undertaking for any committee, even though that committee was composed of the leaders of the convention. The concentration of the convention's attention on any part of the constitution greatly compromised the otherwise commanding leadership of certain men. And few parts of that document were more closely followed by every delegate, public men, editor, and a large majority of the voters of Missouri, than those few clauses that regulated the establishing of a State bank, the determining of a permanent and a temporary seat of government, and that settled the apportionment of the members of the first State legislature. Three special committees were appointed to handle these subjects even after they had been considered by the committee of the whole following the report of the select committee.

On June 26th a committee composed of Cook of Ste. Genevieve, Pratte and Dawson, was appointed to inquire into what action should be taken by the convention regarding the proposed gift of four sections of land from the United States gov-

ernment for a permanent seat of government of Missouri.[62] On July 3d this committee reported and its report, after a reading, was laid on the table.[63] Nothing further was done with this report and its contents is not known. On the same day that this committee reported another committee composed of Jones, Houts and McFerron, was appointed to report on the Schedule and Banking articles of the constitution.[64] On July 6th, this last committee reported to the convention on a "State Bank and Branches" and on the "Schedule," and these were referred to and considered by the committee of the whole.[65] The contents of these two reports are not known.[66] The schedule as finally reported by the committee of the whole to the convention contained sections on a permanent and a temporary seat of government as well as provisions regulating the transition from a territorial to a state government in Missouri. The committee on style did not change the important sections of the schedule but it did report that section of it which related to the permanent seat of government as a separate article, and this revision was agreed to by the convention.[67] The report of the committee of the whole on a state bank was displaced by a substitute article submitted to the convention by Bates.[68] The debate in the convention over this subject was extended and lasted for several days. Bates' substitute was finally referred to a new banking committee composed of Findlay, Reeves and Riddick.[69] This new committee reported a substitute for Bates' very conservative bank measure and this new substitute was adopted by the convention.

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[62] *Journal*, p. 13. The author of the resolution that created this committee was Cook of Ste. Genevieve. It is of interest to notice that no northern or western delegate was on this committee and also that the agricultural class was unrepresented.

[63] *Ibid.*, p. 23.

[64] *Ibid.*, p. 20. Findlay was the author of the motion that created this committee.

[65] *Ibid.*, pp. 27f.

[66] The former, on banks, was ordered printed, but no copy exists.

[67] *Ibid.*, pp. 39, 45. The committee on style reported the schedule on July 13th and the permanent seat of government article on the 15th.

[68] *Ibid.*, pp. 27ff.

[69] *Ibid.*, p. 30. Findlay was the author of the motion creating this new bank committee.

The last committee on the constitution to be appointed was that on enrollment. On July 12th, Findlay, Cook of Ste. Genevieve and Bates, were appointed on this committee and on the 13th, the secretary of the convention was ordered to deliver to it "the different articles of the constitution as they shall have been acted on, for the purpose of having them engrossed for a third reading, and final passage." [70] On the 17th of July the engrossed constitution was read in its final passage and was adopted by a vote of thirty-nine to one. Emmons was absent on this final vote owing to indisposition. McFerron cast a vote against the adoption of the constitution because of his objection to that section which disqualified every citizen naturalized since 1804 from being a qualified candidate for governor of Missouri.[71] On the 19th the committee on enrollment reported to the convention that the constitution had been truly enrolled. It was then signed by the president and by all the delegates, "and countersigned by the secretary." [72]

[70] *Ibid.*, p. 39. A committee was appointed on the 17th to cause the constitution to be translated into the French language, and three hundred copies to be printed and distributed for the use of the French inhabitants. Pratte, Chouteau and Riddick were appointed on this committee. *Ibid.*, p. 46.

[71] *Ibid.*, pp. 46f. McFerron obtained leave of the convention to enter this objection on the *Journal*. McFerron's objection was to Art. IV. sec. 2.

[72] *Ibid.*, pp. 47f.

CHAPTER VII.

AUTHORSHIP OF THE MISSOURI CONSTITUTION OF 1820.

The authorship of the Missouri constitution of 1820 will always prove an interesting subject for discussion and investigation. This subject carries all the "ear-marks" for controversial writing that are so characteristic of many questions in English constitutional history. The latter are settled in a "final" manner every decade but each settlement is only a new basis for further controversy. The facts at hand have always proven sufficient for a decision but not sufficient to prevent a refutation of that decision or to prevent a different interpretation. So in the case of the authorship of the Missouri constitution of 1820, there has always existed data enough to warrant a conviction, but, curiously, this data has either been of an untrustworthy character, or has not been carefully interpreted, or has been entirely passed over to give place to rumor. The evidence at hand is today, however, sufficiently strong to warrant a scientific investigation and discussion of this subject.

The secondary authorities are not satisfactory, advancing little or no evidence for their statements.[1] Their conclusions,

[1] Darby, *op. cit.*, p. 28, states as follows: "The most important provisions of that instrument were framed by David Barton; and from that day to the present it has been called and known as the *Barton Constitution*." (Darby published his *Recollections* in 1880.)

Billon, *op. cit.*, p. 106, *MM.*, who probably followed Darby on this point, says the constitution was "mostly the work of David Barton." (Billon published his *Annals of 1804-21* in 1888.) Houck, III. 250, agrees with Billon.

Both Darby and Billon deserve consideration for many of their statements that are even unsupported with evidence. Both were contemporaries and partly makers of the events that occurred in Missouri history almost from the admission of that State to the date of the publication of their works,—a period of over half a century. There is, therefore, probably some element of value in the foregoing quotations; but to accept these statements unquestioned is impossible.

Switzler, Carr, and Davis and Durrie make no comment on the authorship of this constitution.

Hodder, *Side Lights on the Mo. Compromise*, rejects Darby and Billon regarding Barton's authorship. He very suggestively writes: "The meagre record of the Journal furnishes no support for it. It would seem to be the result of confusing the authorship of the constitution with the name given to the convention

therefore, can have no more value here than merely to corroborate or to contradict what will have been determined on better evidence. And, as is well known, neither mere corroboration nor contradiction adds to or detracts from the intrinsic worth of a historical fact.

The source material and the indirect evidence available are, however, very valuable and are of a trustworthy character. The former is confined to the *Journal* of the convention and to newspaper articles: the latter consists principally of those biographical facts that relate to the personnel of the convention. One is the foundation for our investigation, the other supplements and checks the former. Both are so closely related that either would be unreliable if unsupported by the other. We are, therefore, forced to interpret the source material not only by what it seems to say but also by what the biographies of the delegates will permit it to say. Thus the acts of the delegates in the convention and the lives of these men outside that body enable us to determine in a general way the authorship of Missouri's constitution of 1820.

In determining the authorship of Missouri's constitution of 1820 we purpose to interpret the activity of the delegates on constitution measures in four ways. First, we shall determine what delegates, acting as individuals and not as committees, were introducers of measures on which no vote was recorded; second, what delegates, acting in their individual capacity, were introducers of important measures on which votes were recorded; third, what delegates were successful and what were unsuccessful in voting on important measures; and fourth,

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by reason of Barton's having been its presiding officer." Hodder thinks that Bates was the leading spirit of the convention and by being chairman of the committee on style "occupies with reference to the first constitution of Missouri the position which Gouveneur Morris occupies with reference to the Constitution of the United States." (*Am. Hist. Assn. Report*, 1909, p. 156; *Mo. Hist. Review*, V. 142.) We are unable to accept all of Hodder's statements regarding Bates' relation to this constitution. We are certain that Hodder did not make a careful examination of the *Journal* nor was he sufficiently informed regarding the personnel of the convention. We appreciate, however, the high worth of the remainder of his paper and, further, that this question of the authorship of Missouri's first constitution was not an essential part of Hodder's study. Our objections to Hodder's explanation of the constitution's authorship will be apparent as we proceed.

what delegates were appointed on committees that drafted the constitution.[2]

The convention considered and decided thirty-three different constitution measures on which no vote was recorded. Of these thirty-three measures twenty-nine were important. These measures were introduced by fifteen delegates. Bates introduced five measures: two of these were important, one only relatively important, and two unimportant,—all five were adopted.[3] McFerron introduced four measures: three were important, of which one was adopted, and one unimportant, which also carried.[4] The single important measure of McFerron's that carried, proved immediately to be the initiatory measure to a proposition which he was opposed to and which was adopted. In short, McFerron's one conspicuous victory proved a defeat.[5] John Cook introduced four measures: three were important, and one of doubtful significance,—all four were adopted.[6] Scott, Riddick and Perry, each introduced three

[2] The meagerness of the *Journal's* account of the convention makes necessary such a detailed manner of proof. The absence of speeches and letters of the delegates on this subject also makes essential such a minute analysis of the votes of the delegates.

[3] *Journal*, pp. 36, 38, 40, 42. Bates'es two important measures were the striking out of the constitution a section which made it commandatory on the legislature to suppress duelling and a section which made judgments confessed for debt or damages in any court of record or before a justice of the peace, as valid as judgments rendered in the ordinary course of legal proceedings. His relatively important measure provided for the first revision of the laws to be made within three years instead of five. One of Bates' unimportant measures, a very interesting one, gave the name "Declaration of Rights" instead of its previous designation, "General Provisions," to those fundamental principles of individual liberty that are so deeply imbedded in the laws of English speaking people.

[4] *Ibid.*, pp. 21, 25, 40, 43. McFerron's three important measures, the second of which was adopted, were to give the legislature power to abolish the office of lieutenant-governor, to expressly give equity jurisdiction to the State courts, and to insert in the constitution an excellent and advanced section on public schools, which section also included an educational qualification for voters after 1841. His unimportant measure was section two of article XIII. of the constitution.

[5] *Ibid.*, p. 40. McFerron amended the first section of the article on the judiciary so as to expressly give *equity* jurisdiction to the State's courts. Bates then established the office of *chancellor*, which was opposed by McFerron.

[6] *Ibid.*, pp. 22, 31, 37, 44. Cook's amendment relating to the election of sheriffs and coroners is not clear to us. His three important measures enlarged the powers of the permanent seat of government commissioners that were to be appointed at the first session of the legislature, reduced the minimum size of new counties from six hundred and twenty-five square miles to four hundred,

important measures. All of Scott's measures were adopted; two of Riddick's; and one of Perry's.[7] Buckner, Ramsay and Hammond, each introduced two important measures. All of Buckner's and Ramsay's measures and one of Hammond's, were adopted.[8] Boone, Dawson, Jones, Ray and Thomas, each introduced an important measure. The measures of Dawson, Jones and Ray were adopted; part of Thomas'es carried; and Boone's failed to carry. Evans introduced a measure, that passed, which struck out an unknown section and inserted a new one. The new section was later struck out.[9] The fifteen delegates who introduced the thirty-three

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and included section 2 of article X. of the constitution, which conformed to the conditions of the Enabling Act regarding the free navigation of all navigable streams in or bordering on Missouri.

[7] Scott was the author of the clause that disqualified United States soldiers from voting in Missouri, of the section that empowered the legislature to determine the salary of its members, and of both sections of article VI. of the constitution which related to the establishment of a public school system and a state university. (*Journal*, pp. 35, 36, 37f.) Scott may be justly called the father of Missouri's educational system, having not only obtained from Congress the land grants for this purpose but having also written the broad, constitutional provisions governing these grants.

Riddick was the author of the clause that gave the legislature power to change the exclusive original jurisdiction of the circuit courts in civil cases, and of the clause that limited the number of branches of the state bank to five. He also introduced a measure to strike out the clause that empowered the legislature to pass laws permitting slave-owners to emancipate their slaves. This was lost. (*Journal*, pp. 23, 30, 36.)

Perry was the author of the four year term for senators. He introduced a measure striking out the $2,000.00 a year minimum salary clause for judges, with the view of inserting $1,600.00. The $2,000.00 was struck out, but $1,800.00 was inserted. He later had the $1,800.00 struck out, but $2,000.00 was inserted despite Perry's opposition. Thus these two last important measures of Perry were lost. Perry belonged to the low-salary faction of the convention that fought hard, though unsuccessfully, to reduce the compensation allowed the state officers by the constitution. (*Journal*, pp. 16, 24, 40.)

[8] Buckner introduced one measure limiting the maximum capital stock of the state bank to five million dollars and another excepting priests and preachers from being subject to military duty or from being compelled to bear arms. (*Journal*, pp. 30, 42.) Ramsay introduced one measure that was the same as Buckner's regarding bank stock and another that prescribed biennial sessions of the legislature and the time of meeting. (*Journal*, pp. 28, 37.) Hammond was the author of a measure which made it commandatory on the legislature to suppress duelling. After the passage of the section, Bates had it struck out. Hammond was also the author of the section which compelled a debtor to surrender his property according to the manner prescribed by law if he expected to be secure from imprisonment for debt. (*Journal*, pp. 36, 42.)

[9] Boone tried to have the temporary seat of government established at St. Charles instead of at St. Louis. His measure lost. (*Journal*, p. 32.) Dawson was the author of the thirty year minimum age qualification of judges. (*Ibid.*, p.

measures in which no vote was recorded fall naturally into four classes. The first class consisted of Bates, John Cook and Scott. These three men introduced and had adopted nine important measures and three unimportant ones. They were the authors of thirty-one per cent of the important measures introduced and of fifty per cent of those adopted. Again, they were the authors of seventy-five per cent of the unimportant measures introduced and adopted. The second class consisted of Riddick, Buckner and Ramsay. These delegates introduced six important measures of which five were adopted. They were the authors of twenty-one per cent of the important measures introduced and of twenty-eight per cent of those adopted. The third class consisted of Dawson, Ray, Hammond and Perry. These four men introduced seven important measures of which four were adopted. They were the authors of twenty-four per cent of the important measures introduced and of twenty-two per cent of those adopted. The fourth class consisted of Boone, Evans, Jones, McFerron and Thomas. These five introduced seven important measures and one unimportant one, of which only the last was adopted. They were the authors of twenty-four per cent of the important measures introduced but failed to have one adopted.

These figures make it evident that the principal authors of this kind of adopted measures were Bates, John Cook and Scott. The individual successful average of each of the delegates of the first class was sixteen and two-thirds per cent; of the second class nine and one-third per cent; of the third class five and one-half per cent, and of the fourth class, 0%. The delegates of all four classes were men of ability and were active in political affairs. Their part in framing Missouri's constitution of 1820 would have been a very important one had they accomplished nothing more. This is especially true of

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23.) Jones was the author of a section requiring state or United States officials to resign their office fifteen days before their appointment or election to a new office. (*Ibid.*, p. 17). This was adopted but later was omitted from the constitution. Ray reduced the minimum size of old counties from twenty-five miles square to twenty. (*Ibid.*, p. 37.) For Thomas'es measures see *Journal*, p. 26. For Evan'es, *ibid.*, p. 27.

Bates, John Cook and Scott, and in a degree of Riddick, Buckner and Ramsay.[10]

The convention considered and decided sixty-nine constitution measures on which the vote was recorded. Of these measures, forty-eight were important.[11] Seven of these had no recorded authors; the remaining forty-one were introduced by sixteen delegates. These sixteen delegates fall naturally into two classes: those who were able to have some of their measures adopted; and those who were entirely unsuccessful.

The first class consisted of five delegates. They introduced fourteen important measures, of which six were adopted. Bates introduced three measures, of which two were adopted. Buckner introduced five measures, of which one was adopted. John Cook introduced two, of which one was adopted. Hammond introduced three and won one. Scott introduced and won one.[12] These five delegates were the authors of this kind of adopted measures. They included the three principal

[10] Barton's official position in the convention or his political astuteness prohibited him from introducing measures in person. He never, however, missed casting a vote.

[11] The final vote on the adoption of the constitution is not included in these forty-eight measures. Only McFerron voted against the adoption of the constitution, so that no trace of authorship of that instrument is found in this vote.

[12] Bates was the author of the section that prohibited the establishing of a religious corporation and of the section that established the office of chancellor. He failed to have struck out the section that provided for the removal of judges on address of the general assembly. (*Journal*, pp. 26, 40, 41.)

Buckner had struck out the clause that provided an educational qualification for voters after 1841. He failed to carry the following provisions: one for a one year term for representatives; one, for a six year term for judges; one which reduced the representation of certain counties by one representative; and one which established St. Charles instead of St. Louis as the first meeting place of the general assembly. (*Journal*, pp. 34, 41, 43, 45, 46.)

John Cook was the author of section one, article XI., of the constitution which prohibited the general assembly from interfering with the primary disposal of the soil of the United States, and from taxing non-resident landowners higher than resident landowners. He failed to have struck out the clause empowering the general assembly to delay judgments, etc. six months. (*Journal*, pp. 25, 44.)

Hammond had struck out a clause that granted the legislature more power in emancipating slaves. (*Journal*, p. 36.) He failed to have struck out a clause which would have resulted in entirely disqualifying state senators and representatives from all civil offices except elective ones during their term. He also failed to have adopted a clause which would have qualified for the governorship any citizen of the United States who was naturalized at the time of the cession of Louisiana. (*Journal*, pp. 35, 39.)

Scott introduced a measure that struck out St. Louis as the temporary seat of government and provided only for the first meeting of the general assembly there with power to adjourn elsewhere till 1826. This carried. (*Journal*, p. 45.)

authors of measures on which no vote was recorded, Bates, John Cook and Scott, and the two able delegates Buckner and Hammond.

The second class consisted of eleven delegates. They introduced twenty-seven important measures, of which none was adopted. Dawson, Emmons, and Riddick, each introduced one measure; Ramsay, two; Evans, Findlay, Green, Jones, Perry and Thomas, each, three; and McFerron, four.[13] These eleven delegates could not have left an impression on the constitution by these measures.

The authorship of the constitution is also partly revealed in the votes cast by the delegates on the foregoing forty-eight important measures. This insight into the constitution is, however, gained in an indirect way. Of these forty-eight measures, only twelve were adopted, and of these twelve, two were nullified by negating each other and two had been reported by a committee. So only eight new measures of the forty-eight important measures were finally incorporated in the constitu-

[13] Dawson favored empowering the legislature to suppress duelling by making the parties fight to death in the presence of appointed, sworn officers. (*Journal*, p. 36.) Emmons favored removing the disqualification on priests and preachers from holding public office. (*Ibid.*, p. 16.) Riddick proposed a tax qualification for voters. (*Ibid.*, p. 34.) Ramsay proposed to abolish the court of chancery, and to strike out the thirty year minimum age qualification for judges. (*Ibid.*, pp. 23, 41.) Evans favored locating the permanent seat of government at St. Louis provided St. Louis erected the state buildings. He also favored an eighteen year minimum age qualification for voters, and *viva voce* voting. (*Ibid.*, pp. 32, 34, 38.) Findlay opposed with two measures a minimum size for new counties. With a third measure he advocated such a limitation if applied to those counties lying east of the fifth principal meridian line. (*Ibid.*, pp. 17, 37.) Green opposed disqualifying priests and preachers from holding public office. With two measures he favored individual responsibility of stockholders in a state bank for the debts of the bank. (*Ibid.*, pp. 30, 35, 43.) Jones opposed giving the general assembly power to change the term and tenure of the sheriff and coroner. He favored a section that prohibited large gifts to religious orders except by the consent of the general assembly. He also favored striking out that clause of the constitution which empowered the permanent seat of government commissioners to buy land from individuals. (*Ibid.*, pp. 22, 26, 31.) Perry attempted with three measures to lower the salary of the Governor and the Judges. (*Ibid.*, pp. 20, 24.) Thomas favored a twenty-one year age qualification for representatives and a twenty-five year age qualification for senators. He favored striking out that provision in the constitution which empowered the legislature to provide that emancipated slaves leave the State. (*Ibid.*, pp. 16, 18.) McFerron favored a one year term for representatives. He advocated with two measures a clause that qualified naturalized citizens of the United States for the governorship. He desired to abolish the office of lieutenant governor. (*Ibid.*, pp. 15, 20, 21, 39.)

tion.[14] Such meager data would be of little value for our purpose if used as direct evidence on the authorship of the constitution, but if used as indirect proof it is important. The votes of the delegates on the forty-eight important questions show to a great degree the divisions or "line-up" of the delegates in the convention. These votes show what delegates were successful either in endorsing the committee's reports or in amending them, and what delegates were unsuccessful in their voting. An analysis of the votes on these forty-eight measures reveal four groups of delegates.

The first group of delegates was composed of those who as individuals were successful in their voting in a ratio ranging from three to one to seven to one. The individuals of this group cast five hundred eighty-two successful votes and only one hundred thirty-three unsuccessful ones. They cast forty-eight and one-half per cent of the successful votes and only twenty-five per cent of the unsuccessful ones. This group was composed of seventeen delegates. They were Barton, Bates, Boone, Chouteau, Clark, Cleaver, John Cook, Nathaniel Cook, Dawson, Dodge, Heath, Rector, Riddick, Scott, Sullivan, Talbot, and Wallace. Only four of these, Barton, Clark, Nathaniel Cook and Riddick, voted on all forty-eight measures. Scott did not cast a vote until July eleventh and missed twenty-five of the forty-eight votes; Boone and Chouteau each missed seventeen votes; and Heath missed fifteen votes. The most successful voters of this class were Barton, Chouteau, the two Cooks, Dodge, Rector, and Scott. Of these seven delegates

[14] Six of the adopted measures were those introduced by Bates, John Cook, Scott, Buckner and Hammond. The other six adopted had no recorded authors. They were on the following subjects: providing that the lieutenant-governor should be president of the senate and have a vote on a tie (*Journal*, p. 21); lowering the minimum salary of judges from $2,000.00 to $1,800.00 a year (*Ibid.*, p. 24); adopting the original minimum salary of $2,000.00 a year for judges (*Ibid.*, pp. 40f.); providing that one-half the state bank stock should be reserved to the State (*Ibid.*, p. 28.); adopting Findlay's committee's bank article, the one finally included in the constitution (*Ibid.*, p. 30.); adopting the permanent seat of government article as reported by the committee and as amended by John Cook, and as finally incorporated in the constitution (*Ibid.*, p. 32.). One measure on which the vote is recorded was lost. This provided that the temporary seat of government be at Potosi instead of at St. Louis. The author of this measure was not recorded. (*Ibid.*, p. 45.)

Barton, Chouteau, John Cook, Rector and Scott stood highest in their voting average.

The second group of delegates was composed of those who as individuals were successful in their voting in a ratio ranging from two to one to two and one-half to one. The individuals of this group cast three hundred and forty-one successful votes and one hundred and fifty-eight unsuccessful ones. They cast twenty-eight and one-half per cent of the successful votes and twenty-nine per cent of the unsuccessful ones. This group was composed of eleven delegates. They were Baber, Brown, Evans, Findlay, Green, Henry, Hutchings, Jones, Lillard, Perry and Pratte. Only three of these, Brown, Jones and Perry, voted on all forty-eight measures. Baber missed fifteen of the forty-eight votes. The most successful voters of this class were Evans, Findlay, Green and Jones. None of these four delegates was, however, as successful as any of the delegates in the first class.

The third class of delegates was composed of those who as individuals were successful about half the time in their voting. The individual delegates of this group cast two hundred and thirty-one successful votes and one hundred and eighty-eight unsuccessful ones. They cast twenty per cent of the successful votes and thirty-three per cent of the unsuccessful ones. This group was composed of ten delegates. They were Bettis, Buckner, Burckhartt, Hammond, Houts, McNair, Ramsay, Ray, Reeves, and Thomas. Only two of these, Burckhartt and Houts, voted on all forty-eight measures. Buckner missed nineteen and Thomas eighteen of the forty-eight votes. The most successful voters of this class were Buckner, Burckhartt, Houts and Ray. None of these stood, however, as high as any delegate in the second class on this point.

The fourth class was composed of three delegates who were very unsuccessful in their voting. The individual delegates of this class cast thirty-eight successful votes and sixty-six unsuccessful ones. They cast three per cent of the successful votes and thirteen per cent of the unsuccessful ones. The delegates in this group were Byrd, Emmons and McFerron.

Emmons voted only nine times, missing thirty-nine of the forty-eight votes taken.

An analysis of the foregoing data relating to the votes recorded on the forty-eight important measures reveals the following facts concerning the authorship of the constitution. First, the convention sustained its committees in their reports on the constitution and permitted few alterations. The convention adopted only eight new measures of the forty-eight important ones proposed. The leaders behind this movement for "regularity" were Barton, Bates, John Cook, Findlay and Rector.[15] Although Chouteau and Scott were successful voters, their influence on the constitution was lessened in this respect by their long absences from the convention. Second, aiding this "regularity" and the leaders, was a majority of the delegates. Third, opposing these leaders in a conservative way were ten delegates,[16] all men of ability and political experience. The leader of this opposition was Buckner. His activity on the floor in advocating changes in the reports of the various committees and his ability in securing some of his alterations adopted, both prove this leadership. Ranking next to Buckner in this work was Perry. Perry was the watchdog of the treasury and the low-salary man of the convention. These men and their assistants were not, however, able to accomplish much. And fourth, opposing the leaders of the convention in a radical manner were three delegates,[17] who were hopelessly unsuccessful.

The convention by adopting the committee method of procedure delegated great powers to few men. Although the various committees' drafts of the constitution were referred for discussion to the committee of the whole or to the convention and were there subject to alteration, adoption or rejection, still the original sections contained in these drafts were given more respect and consideration than substitute provisions received. Unless an officer or a committee fairly and democratically chosen by a body of men, is flagrantly incompetent or corrupt,

[15] Barton, John Cook and Rector show this in their successful voting against innovations. Bates and Findlay do this by a comparatively high voting average and especially by their prominent committee positions.

[16] See *supra*, class three.

[17] See *supra*, class four.

the acts and reports of such officer or committee are generally approved by the appointors; and this is especially true of conservative, deliberative bodies. The reason for this tendency is found not only in the economy of time and effort that it effects, but also in the unseen and usually unappreciated halo of semi-authority that invests these acts or reports. And this semi-authority is greatly increased in influence when the constituted officer and the members of the committees are the leaders among their fellow-delegates in debate, deliberation, conversation and writing. Such was the condition in Missouri's first constitutional convention.

This ascendancy of the committee in the Missouri convention of 1820 is conclusively proven by the few changes made by that convention in the constitution as reported by the committees. Of the thirty-three measures introduced on which no votes were recorded, twenty-nine were important. Of these twenty-nine measures, eighteen were finally incorporated in the constitution. Of the sixty-eight measures introduced on which the votes were recorded, forty-eight were important. Of these forty-eight measures, only eight new ones were incorporated in the constitution. Thus of the hundreds of clauses in the original constitution as reported by the committees, only twenty-six measures were amended or added to.

The greatest statesman, the leading and one of the most skillful politicians, the ablest orator and debater and the most popular public man in Missouri in 1820, was chosen president of the convention. Both by virtue of his position and of his talents, David Barton was the leading spirit and the most influential man in the convention. He was given the power of appointing all committees and this power was never limited by the delegates. Possessed of such authority, endowed with great ability, and having an inclination to exercise both, Barton exerted a most significant influence in the drafting and adopting of many provisions in the constitution. If to one man were to be accorded the honor of drafting the Missouri constitution of 1820, that man would be David Barton. As a singular proof of Barton's influence even on the floor of the convention is the fact that his vote on a constitutional measure was practically

identical with the adoption or rejection of that measure. Further, an analysis of the voting based on whether the votes cast were Barton or anti-Barton votes, gives the same results and divides the delegates into the same four classes as are obtained when the votes are analyzed from the standpoint of their being successful or unsuccessful votes on constitutional measures.

Associated with Barton in framing the constitution in the committees were seven of his friends, John Rice Jones, John D. Cook, Edward Bates, James Evans, John Scott, Jonathan Smith Findlay, and, to some extent, Jonathan Ramsay.[18] The first five of these were lawyers; Findlay was a schoolmaster-politician; and Ramsay, a successful farmer, a shrewd business man and a politician combined: all were aspirants for political honors. These men were not only active on the floor of the convention but, excepting Scott, they filled all the places on the two principal constitutional committees, and two of them held the chairmanship of the two most important minor committees.[19]

Of the forty-one delegates Jones was easily the most learned, the most highly educated, the most accomplished, and perhaps the most successful financially. One of the oldest men in the convention, Jones possessed the best trained and the deepest mind in that body. It is, therefore, not surprising that Barton appointed him chairman of the select committee, the first and only committee to draft a complete constitution for Missouri in 1820 that was printed and discussed by the conven-

[18] Although these men did not vote together on all measures, they had many views in common and were friends. Ramsay was, perhaps, less under the sway of Barton than any of the seven. Jones was more of a colleague than a lieutenant of Barton.

[19] The first four committees appointed to draft a constitution were of no importance. Their reports were never read by the convention or printed. The select committee was given practically unlimited power in changing these reports. We also do not regard the land committee on the permanent seat of government, composed of Cook of Ste. Genevieve, Pratte and Dawson, of any importance in regard to the authorship of the constitution, since this report was tabled and never later considered. The committee on enrollment was purely a clerical body that was created simply to see that the constitution was correctly engrossed and enrolled as it had been passed. The membership of this committee was the same as that of the committee on style except that Findlay was chairman of the former and Bates of the latter.

tion.[20] The constitution reported by this committee was the ground plan that guided the delegates in framing and adopting Missouri's first constitution. Jones was also appointed chairman of the committee on schedule and banking, whose report was largely adopted by the convention so far as it related to purely schedule provisions and to the permanent seat of government.[21]

The co-workers of Jones on the select committee were Evans, John D. Cook and Ramsay. The appointment of Evans to this committee was, we believe, largely a result of Barton's friendship for him. Both were boon companions, both enjoyed the cup, both were able lawyers and were about the same age, and both were at this time very popular in Missouri. It is a sad commentary on the lives of Barton and Evans that both later became mental and financial wrecks. The logical delegate for Evan's place on the select committee was General William V. Rector, the chairman of the original committee on the executive department. Barton and his friends probably did not trust Rector or could not rely on his support. The fatal rupture between these men may have had its inception about this time. Just three years and one week after the appointment of the select committee, Joshua Barton, elder brother of David, was killed by T. C. Rector, brother of William V., in a duel, which was caused by the former charging General Rector of corruption in office: and one year and one day later through the efforts of Senator Barton, General William V. Rector was dishonorably dismissed from office by the head of the United States General Land Office, acting on order of the President of the United States.[22]

The appointment of John D. Cook was also a pleasant and politic act of Barton's. The logical appointee for Cook's place was Judge Richard S. Thomas, chairman of the original com-

[20] Jones had previously been appointed chairman of the legislative committee, one of the four committees whose reports were handed over to the select committee.

[21] The other members of the schedule committee were Houts and McFerron. Judging from the barren results that McFerron obtained on the floor of the convention, it is not probable that he was able to thwart Jones on this committee. Little is known of Houts except that he was a merchant at this time.

[22] *Edwards Great West*, p. 332; *Mo. Intell.*, July 31, 1824.

mittee on the judiciary. Thomas' insurgent activity in trying to get the reports of the four original committees read before the convention was undoubtedly displeasing to the self-appointed leaders of that body. On the other hand, John D. Cook was loyal, was endowed with great ability, and with the aid of his elder brother, Nathaniel, who was also a delegate, wielded a remarkable influence.[23] Although a young man, being barely thirty years old, John D. Cook was the only delegate that was a member of both the select committee and the committee on style. He was also preeminent among the delegates in holding the largest number of constitution committee places, being a member of four committees and chairman of another,[24] and in being one of the two delegates later appointed to the Supreme Court of Missouri.[25] John Cook and Scott shared the distinction of being the only delegates who ranked foremost in the convention in being introducers of adopted measures on which no votes were recorded, in being introducers of adopted measures on which votes were recorded, and in being leaders in casting successful votes.

While Evans and John Cook worked in harmony with Barton, as is easily seen in a survey of the votes recorded in the *Journal* on the most important measures of the constitution, Ramsay seems to have maintained an independent attitude toward the lawyer junto. In fact, it is difficult to ascertain why General Jonathan Ramsay was appointed on the select committee instead of General Duff Green.[26] This may have

[23] Both Evans and the Cooks were consistent supporters of Barton.

[24] Member of original judiciary committee, select committee, committee on style, committee on enrollment: chairman of public land committee on permanent seat of government.

[25] Cook was appointed one of the first three judges of the Supreme Court of Missouri in 1820 by Governor McNair and again in 1822, after a constitutional amendment had passed that vacated the Supreme and Circuit Court Judgeships. He resigned in 1823 and in 1825 was appointed to the southern circuit of Missouri after its former incumbent, Richard S. Thomas, had been impeached. It is interesting to note that Thomas' chief advocate in his impeachment trial was John D. Cook. (*Mo. Gasette*, Dec. 6, 1820; *Mo. Intell.*, Dec. 31, 1822, Feb. 1, 1825; Houck, *op. cit.*, III. 10.)

[26] The original committee on the bill of rights, etc., was composed of Ramsay, Hammond and Green. One of these was to be appointed on the select committee: Barton chose Ramsay. Hammond was an impossible appointee owing to the selection of Jones, Evans and Cook, who all came from counties lying south of the Missouri River. It would have been obviously impolitic to have appointed

been done by Barton for fear that Ramsay, who really deserved the place, would otherwise feel insulted and wield his great influence in opposing important measures of the leaders.[27] If this was the purpose of Barton and his friends, of placating Ramsay, it was only partly successful.[28] Ramsay's activity in the convention was directed towards realizing the wishes of his pioneer constituents, regardless of the approbation or criticism of the St. Louis and south-east Missouri delegates. Ramsay tried, however, to have struck out the thirty year minimum age qualification for judges. This was entirely for the advantage of Bates who was only twenty-six years of age at that time and who was a very probable candidate for appointment to the Supreme Court bench, if Governor Clark were elected.[29] Green was also under thirty years of age but was more inclined towards business than law. However, the machinery and the mind of the convention when opposed to Ramsay, was successful, and his influence was relatively small in the framing of the constitution.

In striking contrast to Ramsay was the youthful Edward Bates. The latter had not yet attained the age of twenty-seven years, and under the constitution that he was so instru-

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the fourth member of this committee from that section. It was essential to have on the select committee at least one representative of the northern pioneer counties. Ramsay was perhaps a stronger man for the place than Green. Ramsay was at this time forty-five years old, possessed a commanding personality, and had great business ability. His military and civil record in Kentucky was distinguished, and, despite his lack of education, he was a leader not to be ignored or antagonized. Besides, Ramsay was the type of man who could cast more votes on the floor than in the committee. Green, on the other hand, was only twenty-nine years old, and although a man of good education and a member of the bar, had the faculty of making enemies faster than friends. Even in his own county, Howard, Green by his fearlessness and his many enterprises had aroused much opposition. Green was also not pleasing to the St. Louis politicians in his stand for very conservative guards being imposed on stockholders of the state bank. He was, however, the superior of Ramsay in versatility and intellect, and later played an important part in the nation's history.

[27] Ramsay was so outvoted on this committee that he was helpless in thwarting the will of Barton and others, and his appointment was no risk in this respect.

[28] Ramsay opposed the following important measures that were advocated by the lawyer leaders: $2,000.00 salary for the governor (*J.*, p. 20); a court of Chancery, composed on one Chancellor (*J.*, pp. 23, 40, 41); high salary for judges (*J.*, p. 24); state bank (*J.*, pp. 29, 30); and favored individual responsibility of stockholders of state bank (*J.*, p. 30) and *viva voce* voting (*J.*, p. 38), both of which were opposed by Barton and some of his friends.

[29] *Journal*, p. 41.

mental in framing he was in 1820 disqualified by his youth from being governor, lieutenant-governor, state senator, judge of a circuit court, supreme court judge, or chancellor. Despite his age Bates was appointed as chairman of the committee on style, which in importance ranked next to, if it did not equal, the select committee. By order of the convention every article and section of the constitution after passing through the committee of the whole was entrusted to this committee for proper revision. Its impress was, therefore, left on every part of that instrument. In appointing Bates at the head of the committee on style Barton not only filled an important place with a devoted friend and admirer but also with a remarkably gifted politician and lawyer. A man of high ideals, strong character, well-poised independence, fearless courage, and of almost unlimited intellectual capacity, Bates was a fitting choice to do the last constructive work on Missouri's first constitution and to perfect and polish that document for future generations.[30]

The other members of the committee on style, John D. Cook and Jonathan Smith Findlay, were also exceptionally able men. The latter, who alone of these three has not been considered, was a man of fine education, rare intellectual attainments, and high moral principles. Engaged at this time in school teaching, Findlay appears to have wielded considerable influence in the Boone's Lick county, and was greatly respected for his ability as a writer and for his courage as a man.[31] His last public office was that of register of the land office at Lexington, Missouri, which he held until two years before his death. Three of his brothers were Congressmen from Pennsylvania and Ohio, and one held the two highest offices in the gift of the former state, being elected Governor and later United States Senator.[32] Findlay enjoyed the full confidence of Barton and was appointed on two other committees, being chairman of both the committee on enrollment and the very important committee on a state bank and branches. The reports of both these com-

[30] Besides being appointed on the committee on style, Bates was also a member of the original committee on the judiciary and of the committee on enrollment.

[31] *Mo. Intell.*, July 16, 1819; Mar. 19, 1821; Nov. 10, 1832.

[32] *Ibid.*, Nov. 10, 1832.

mittees were adopted by the convention without further unnecessary change, a compliment to their makers. The members of the latter committee besides Findlay were Benjamin H. Reeves of Howard and Colonel Thomas F. Riddick of St. Louis. Reeves was one of the leading men in north Missouri, was repeatedly elected state senator, and became Missouri's second lieutenant-governor.[33] Riddick was the greatest of the founders of the St. Louis public school system. His official career in Missouri began in 1804 and continued till his death in 1830. He was probably the author of the article in the constitution on the state bank, as his experience in that line was more extended than that of either Findlay or Reeves.[34]

Although a member of no committee, the Honorable John Scott, a delegate from Ste. Genevieve, was very instrumental in the drafting of one entire article and several important sections of the constitution. To Scott belongs the great honor of being the author of Missouri's excellent constitutional provisions relating to education.[35] It was indeed appropriate that a university graduate should have been permitted by fortune to be the one who not only obtained the large grants of public land that made possible the establishment of a great public school system of education in Missouri with a state university at its head but who also drafted and had adopted the fundamental provisions in that commonwealth's first constitution that safeguarded the treasures and encouraged their economic conservation, on which Missouri's present free public school system and state university were founded.[36] And, if we may be pardoned for a digression, equally appropriate was it that another university graduate, James S. Rollins, was later given the honor of fathering the bill that created the university that had been so carefully provided for by Missouri's last territorial Delegate and her first United States Representative in

[33] *Official Manual Mo.*, 1913-14, pp. 103, 150ff; *Mo. Intell.*, Oct. 3, 1835.

[34] Billon, *op. cit.*, pp. 188f; *Edwards Great West*, pp. 309ff; *Mo. Gazette*, April 20, 1820, May 3, 1820, May 12, 1821; Darby, *op. cit.*, pp. 14, 18; Houck, *op cit.*, II. pp. 383, 418, III. pp. 49, 71, 103. Riddick had been the largest stockholder and was the second president of the old Missouri Bank of St. Louis.

[35] *J.*, p. 38.

[36] Scott graduated from Princeton University in 1802.

Congress. Scott was also the author of an important provision in the constitution that imposed a limitation on gerrymandering in the establishing of senatorial districts.[37] He also secured the adoption of a clause that disqualified United States soldiers and sailors in regular service from voting in this state,[38] and was the author of that section of the constitution that provided for the compensation of the members of the legislature.[39] Together with John D. Cook, Scott secured the adoption of that section of the constitution that provided for the temporary seat of government.[40] On this last measure, the voting was sectional: all the St. Louis and the northern county delegates except three were opposed by all the southern representatives except one. Even Barton's and Bates' friends, as John Cook, Evans, Scott, Jones, and many others aligned themselves on this proposition against St. Louis and her politicians, and succeeded in leaving the question of the temporary seat of government an open one in the hands of the legislature instead of deciding in favor of St. Louis, which had been previously selected by the convention. On other questions, Scott voted with the lawyers as a rule. Considering the few days that Scott's name appears among the ayes and nays, he was remarkably active and successful in the convention.[41]

As a politician and a lawyer, John Scott was able, conscientious, and popular. Although not a brilliant speaker like Barton or even Bates, he was a formidable opponent in debate. His superior education, scholarly habits, his perfect mastery of law and history, his attention to details, and his moral scruples, frequently enabled him to overcome more gifted orators and advocates. His friendship for Barton and Benton was a close one, and Benton's rupture with him over the Adams-Jackson contest inflicted a cruel wound to both.

The framing of Missouri's constitution of 1820 was not the work of one man. The principal authors were Barton, Bates,

[37] *J.*, p. 34.
[38] *Ibid.*
[39] *Ibid.*, p. 36.
[40] *J.*, pp. 45f.
[41] Scott's name does not appear in the aye and nay voting until July 11th, on which day the convention began the consideration of the report of the committee on style. (*J.*, pp. 33ff.)

John Cook, Jones, Findlay and Scott. These six delegates held first place as introducers of measures, as voters in the convention, and as members of the three most important committees—the select committee, the committee on style, and the committee on a state bank. Barton was the leader both of the legally organized convention and of the political machine of that body. He wielded, therefore, the most important influence of all the delegates on the constitution. Bates, John Cook, Jones and Findlay, were the great organizers and committeemen of the convention. Scott was the one conspicuous delegate who, not holding a committee place, was able to accomplish things on the floor of the convention. Of these six delegates, five were lawyers, and one, Findlay, was a pedagogue-politician. All were remarkably able men. They later held political positions ranging in importance from that of register of a land office to that of United States Senator and of United States cabinet official.

The next set of delegates in importance was Evans, Ramsay, Riddick, Reeves, Rector and Green. Their impress on the constitution was, however, comparatively slight. Some were followers of the "organization;" several were independent but not hostile to the leaders. All were able men and were ambitious. Their biographies reveal six successful politicians who held offices ranging from that of state representative to that of national political boss.

The third class of delegates who may possibly have influenced the framing of the constitution was Buckner, Perry and Hammond. These three delegates were leaders of the opposition. They were seemingly unable to accomplish much, but it is not improbable that some compromise measures were adopted through their influence. These men were well equipped both in ability and in experience. Their success in the convention was not, however, striking. The "machine" under the direction of the leaders was able to accomplish nearly everything it desired. Barton, Bates, John Cook, Jones, Findlay and Scott, were the principal authors of the constitution of Missouri of 1820.

CHAPTER VIII.

ORIGIN AND CONTENT OF THE CONSTITUTION.[1]

The purpose of this chapter is to give an account of the origin and to analyze the content of the Missouri constitution of 1820. The origin of the Missouri constitution of 1820 will be considered by comparing its "Preamble" and thirteen articles with similar provisions of the then existing twenty-three state constitutions and the constitution of the United States. The special features of the Missouri constitution that were exceptional in character, will also be set forth. The analysis of the content of the constitution will consist of dividing it into its logical parts in conformity with the accepted principles governing the present science of government. The Missouri constitution of 1820 followed the normal type of state constitutions and in general conformed with the accepted scientific principles governing such organic acts. Few detailed provisions found their way into this constitution. It was a model of conciseness and perspicuity, dealing only in broad, general statements. It was essentially a constitution framed by a sovereign convention, and not a volume of purely ordinary legislative provisions that characterize so many modern state instruments. Owing to its merits in this respect, the Missouri constitution of 1820 lends itself to a simultaneous discussion of its origin and its content.[2]

In tracing the origin of the Missouri constitution of 1820 and in estimating the influence exerted on it by other constitutions caution is required. This is on account of several things: first, verbatim copies in this constitution of sections in other constitutions were the exception; second, even when such copies occur they were sometimes the common property of several states; and third, most of the sections in this constitution,

[1] For copy of the constitution see *Appendix III.*

[2] This chapter is based on a much more detailed thesis submitted by the author in 1911 to the University of Missouri in partial fulfillment of the requirements for the degree of Master of Arts. The title of this thesis is: "*The First Constitution of Missouri. A study of its Origin. by Floyd Calvin Shoemaker.*" References here to this work will be given to *Shoemaker.*

although similar to sections in other constitutions, were rarely confined to any one state but appeared here and there throughout the Union and were frequently found in a majority of state constitutions. Because of this it is extremely hazardous to say unqualifiedly that this or that state constitution was the source of a certain provision in the Missouri constitution.

The Missouri constitution of 1820, excluding the schedule, naturally divides itself into three parts: a preamble; a definition of boundaries; and a frame of government, its powers and limitations—the latter including a bill of rights.

The preamble to the Missouri constitution of 1820 was unique. No state constitution of that time contained a prototype of it. In no other preamble were found the words "a free and independent republic." The framing and adopting of state constitutions by representatives of the people in convention assembled was widespread, although the practice of adoption or ratification by the people was gaining ground. In this respect Missouri followed the former rule. Some of the preambles attached to the constitutions of other states were long, others short. Some followed the pattern of the United States constitution, while others gave thanks to God or epitomized man's natural rights. The constitutions of Kentucky, South Carolina, Tennessee, and Virginia, bear the closest resemblance to the Missouri constitution on this point.[3]

The definition of the boundaries of Missouri was set forth in article I, on "Boundaries." This was a verbatim copy of that part of the Missouri Enabling Act that prescribed what the boundaries of Missouri should be.[4]

The frame of government, its powers and limitations, laid down in the Missouri constitution of 1820, was provided for in twelve articles. These articles treated "Of The Distribution Of Powers," "Of The Legislative Power," "Of The Executive Power," "Of The Judicial Power," "Of Education," "Of Internal Improvement," "Of Banks," "Of The Militia," "Of Miscellaneous Provisions," "Of The Permanent Seat of Government," of the "Mode Of Amending The Constitution," and

[3] *Shoemaker*, pp. 17f.
[4] *Cf.*, *supra*, Chapter II.

of a "Declaration of Rights." Some of these provisions were not fundamental and did not properly belong in a constitution, being rather administrative and legislative in character than organic.

The constitution set forth the general principle of the frame of government of the new State in Article II, on "Of The Distribution Of Powers." This principle was that the powers of government should be divided into three distinct departments. Each department was to be confided to a separate magistracy. No person charged with the exercise of powers properly belonging to one of these departments, was to exercise any power properly belonging to either of the others, except where expressly directed or permitted by the constitution.

The conception of a separation of the powers of government into three distinct departments had become so deeply imbedded in American political ideals by 1820, that it is not surprising to find it inserted in the first constitution of Missouri. One authority has said, "the classification of governmental powers into three is as old as Aristotle." [5] This classification was given a theoretical expression by Montesquieu and Blackstone in the eighteenth century.[6] Later it was incorporated and concisely expressed in a majority of the early state constitutions of the Revolutionary Period. Of these instruments the 1780 constitution of Massachusetts is the classic example. Although omitted from the Articles of Confederation, this classification received strength and authority by becoming one of the working principles of the National Government as set forth in the constitution of the United States.

The expression given this concept in the Missouri constitution of 1820, resembles most the language of the constitutions of Alabama, Georgia, Illinois, Indiana, Kentucky, Louisiana and Mississippi. Both the subject matter and the form of this article resembles closely the corresponding provision in the constitutions of Kentucky and Illinois.[7]

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[5] *Foster on the Constitution*, I. 299. For full account see chap. III. par. 42-45. Also, Dunnings, "*Political Theories, Ancient and Mediaeval*," p. 96. The quotation given above should be somewhat limited as it is not entirely correct.

[6] *Story on the Constitution*, I. chap. VII, pp. 388-406. Dunning, "*Political Theories from Luther to Montesquieu*," pp. 412ff.

[7] *Shoemaker*, pp. 20f.

The legislative department took primacy over the executive and judicial departments in the Missouri constitution of 1820. This primacy found expression by placing the legislative department first in order of arrangement, by devoting a larger portion of the constitution to it than to the other two departments, and by making it more powerful than they. The legislative department was not only the strongest of the three branches of government both in its residuary and expressed powers and in its indefinite sphere of control over its two "co-ordinates," but it was endowed with the more important function of acting, under certain limitations, as the legal organization of its sovereign—the people of Missouri. Occupying such prominence, possessed of such power, and endowed with such potentialities, the legislative department set forth in the Missouri constitution of 1820 deserves a more extended treatment than either the executive or the judicial department.

The legislative power was vested in a body called the "General Assembly." This body was organized on the bicameral basis. It consisted of a "Senate" and a "House of Representatives." Perhaps no principle of our government has received more general acceptance in the United States than that of a bicameral legislature. It had long been a fundamental rule of political science for the English people. It was carried over into the colonial governments more or less generally, and, with the exception of Vermont, Pennsylvania and Georgia, it was incorporated into all the constitutions of the Revolutionary Period. Like in many other ways, the Articles of Confederation proved an exception to this idea. It received recognition, however, and became of more binding force by being plainly set forth in the United States constitution. Pennsylvania and Georgia soon adopted it and by 1820 only one state, Vermont, still retained a unicameral legislature. Having such a strong foundation in practice as well as in theory, its expression in section 1, article III of the Missouri constitution is easily accounted for.[8] This section in its brevity and language recalls the corresponding section in the United States constitution.[9]

[8] *Story on the Constitution*, Ch. VIII. 407-422; *Shoemaker*, pp. 22f.
[9] *U. S. Const.*, I. 1.

When compared with the other state constitutions, those of Alabama, Connecticut, Delaware, Georgia, Kentucky, Louisiana, Mississippi and South Carolina, are substantially identical with Missouri's on this section. The constitutions of Illinois, Indiana, Ohio, Tennessee and Maine, also bear a close resemblance to it. The constitutions of Kentucky and Delaware were probably the most influential in its framing both as regards terms used and general expression.[10]

The two houses were organized upon the general principle of popular representation, except that each county was to have at least one representative in the lower chamber. This general principle was that the members of both chambers should be apportioned according to the number of free, white, male inhabitants in the several districts and counties.[11] This principle was applied to the house of representatives by limiting the maximum number of representatives to one hundred and by guaranteeing to each county at least one representative. The general assembly was commanded to apportion the number of representatives among the several counties at its first session and again in 1822, 1824 and every four years thereafter on the basis of the state census returns made on those years. The first general assembly had forty-three representatives. This number was gradually increased as new counties were formed and as population grew.[12] The principle of popular representation was applied to the senate with only two limitations on the power of the general assembly. The number of senators was not to be less than fourteen nor more than thirty-three. Further when the general assembly divided the state into senatorial districts, no county was to be divided, and no county in one district was to be separated from another county in that district by a county lying in a different district.[13] The general assembly was not restricted to districting the State for senators on certain years as in the case of representatives. It appears that the

[10] *Shoemaker*, pp. 22f.
[11] *Mo. Const.*, III. 4, 6.
[12] *Ibid.*
[13] *Mo. Const.*, III. 6.

schemes of apportionment for both houses were copied from the Kentucky Constitution.[14]

The tenure of members of the general assembly was elective.[15] This was the universal rule in all the states for members of both houses.[16] The electors at all elections, as set forth in the Missouri constitution, were limited to free white male citizens of the United States who had attained the age of twenty-one years and who had resided in the state one year and in the county three months preceeding an election. Soldiers and sailors in the United States army or navy were disqualified.[17] These qualifications and disqualifications relating to electors were copied verbatim from the Alabama constitution.[18] After January 1, 1822, all general elections were to be held biennially on the first Monday in August and the electors, in all cases except treason, felony or breach of the peace, were privileged from arrest in attending the elections and in going to and returning from them.[19] Special elections could be called by writ of the governor to fill vacancies in either house of the legislature.

The term of representatives was two years; and of senators, four years.[20] The same term for representatives obtained in only four states,—Illinois, Louisiana, South Carolina and Tennessee.[21] Seven states provided a four year term for senators,—Illinois, Kentucky, Louisiana, New York, South Carolina, Virginia, and Pennsylvania.[22] While the House changed every two years, the Senate was a continuous body. The Missouri constitution provided that at the first session of the general assembly the senators should be divided by lot into two classes. One class was to serve two years, the other four years, so that

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[14] *Shoemaker*, pp. 28, 31.

[15] *Mo. Const.*, III. 2, 5.

[16] *Shoemaker*, p. 24.

[17] *Mo. Const.*, III. 10.

[18] *Shoemaker*, pp. 35f.

[19] *Mo. Const.*, III. 8, 9; *Shoemaker*, pp. 33f. These provisions, which were really political limitations on the power of the general assembly, were taken from the constitution of Illinois.

[20] *Mo. Const.*, III. 2, 5.

[21] *Shoemaker*, pp. 24f. A one year term was the rule in the other states.

[22] *Ibid.*, p. 29. Maryland provided for a five year term; four states, for a three year term; two states, for a two year term; and the remaining states for a one year term.

one half of the senators would be chosen every second year.[23] This provision was probably taken from the Illinois constitution.[24]

Compared with other states, Missouri prescribed high qualifications for her legislators. The members of the House had to possess or comply with five requisites. First, they must have attained the age of twenty-four years. The constitutions of Delaware and Kentucky alone contained the same age qualification, and only one State constitution, that of Ohio, provided a higher one.[25] Second, they must be "free white male citizens of the United States." This qualification was set forth expressly only in the constitution of Alabama and Louisiana, and impliedly in the constitution of Kentucky. However, the term "free white male" was quite general in practice.[26] Third, they must have resided in the State two years before their election. This was followed in only five states,—Alabama, Kentucky, Louisiana, Mississippi and South Carolina.[27] Fourth, they must have resided in the county which they represented one year before their election. This county residence qualification was widespread in the southern states.[28] Fifth, they must have paid a state or county tax. This qualification was followed in the constitutions of only three states,—Illinois, Indiana and Ohio.[29] It seems that the constitutions of Kentucky and Illinois were the models used for defining the qualifications of representatives.

The qualifications for senators were similar to those for representatives. The age and state residence qualifications were, however, higher for the former. Senators were required to be at least thirty years of age and to have resided in the state at least four years preceding their election. The constitutions of Ohio, South Carolina, and the United States, alone set forth such a high age qualification for senators, and the state residence qualification was this high in only three states,—Louisiana, Mis-

[23] *Mo. Const.*, III. 7.
[24] *Shoemaker*, p. 32.
[25] *Mo. Const.*, III. 3: *Shoemaker*, pp. 25ff.
[26] *Ibid.*
[27] *Ibid.*
[28] *Ibid.*
[29] *Ibid.*

sissippi and Pennsylvania. It is probable that the constitutions that exerted the most influence in defining the qualifications for senators, were those of Kentucky, Illinois, Louisana and the United States.[30] Missouri in prescribing qualifications for her law-makers followed those states that had prescribed high requisites except as regards the possession of wealth.

The disqualifications that applied to members of the general assembly were equally as numerous and, with one exception, as advanced as were the qualifications. In general no person was eligible to either house who held a lucrative office under the United States, the State, or the county. Militia officers, justices of the peace, and postmasters were excepted from this general rule.[31] Nearly all the state constitutions followed this general rule.[32] Further, no collector of public money, or his deputy, was eligible to either house or to any office of profit or trust, until he had made an accurate and honest settlement of such money.[33] About half of the state constitutions had a similar provision.[34] Priests and preachers were also ineligible to seats in the general assembly and to all offices of profit under the State, except the office of justice of the peace.[35] The constitution of Kentucky probably exerted the greatest influence in the framing of this provision.[36] The general assembly was authorized to also exclude from all public state offices and from the right of suffrage, all persons convicted of bribery, perjury or other infamous crime.[37] The disqualification on account of crime was taken from either the Illinois or Kentucky constitu-

[30] *Mo. Const.*, III. 5; *Shoemaker*, pp. 29f.
[31] *Mo. Const.*, III. 11.
[32] *Shoemaker*, p. 37.
[33] *Mo. Const.*, III. 12.
[34] *Shoemaker*, p. 37.
[35] *Mo. Const.*, III. 13.
[36] *Shoemaker*, pp. 38f. This disqualification resting on clergymen was first set forth in the constitution of Virginia of 1776. The author of that document was Thomas Jefferson. He purposely set this limitation on the political activity of ecclesiastics. This was a result partly of his ideas on religion as gathered from French philosophy and partly on account of the peculiar position occupied by the clergy in Virginia. The disqualification as expressed in the Virginia constitution excepted no office. This provision was probably copied from the Virginia constitution by the people of Kentucky when they framed their fundamental law but they modified it so as to except the office of justice of the peace. In this latter form Missouri copied it.
[37] *Mo. Const.*, III. 14, 15.

tion.[38] The disqualification for bribery approached nearest to similar provisions in the constitutions of Connecticut and Delaware. Few if any of the states went as far as did Missouri in including so severe a corrupt practices act in their constitutions.[39] Finally no member of the general assembly, during his term of office, was qualified to be appointed to any civil state office, which had been created or the emolument of which had been increased during his term of office, except to such offices as were elective.[40] This disqualification resting on senators and representatives for certain offices was rather widespread among the states.[41]

The different qualifications and disqualifications for legislators set forth in the Missouri constitution, reveal in a degree the advanced character of that organic law. The highest requisites for eligibility in other states consistent with a democratic government, were incorporated, and the strictest provisions in other constitutions regarding ineligibility were also adopted. Ability and honesty were the qualities sought in representatives and senators.

The privileges of senators and representatives consisted of immunity from arrest, except in cases of treason, felony or breach of the peace, during the session of the general assembly and for fifteen days before and after each session. They were further exempted from questioning in any other place for any speech or debate made in either house.[42] The constitutions of a number of the states contained provisions similar to these. The United States constitution probably served as a pattern for all in this respect.[43] Closely associated with the privileges of members was their compensation. The amount of compensation was not determined by the constitution. It was left under the control of the legislature, but no increase was to take effect during the session such increase had been made.[44] Many of the states at that time followed the present rule of limiting the salary of its

[38] *Shoemaker*, p. 39.
[39] *Ibid.*, p. 40.
[40] *Mo. Const.*, III. 16.
[41] *Shoemaker*, p. 41.
[42] *Mo. Const.*, III. 23.
[43] *Shoemaker*, pp. 46f.
[44] *Mo. Const.*, III. 24.

representatives and senators. Missouri patterned her provision on this subject after the constitutions of Alabama, Delaware and Mississippi.[45]

It was provided that the salary of the lieutenant governor, or president of the senate pro tempore, while presiding in the senate, should be the same as was allowed the speaker of the house of representatives.[46] The amount of such compensation was again left under the control of the general assembly. The constitution of Kentucky was probably the pattern followed in this respect.[47]

The regular sessions of the general assembly were biennial on even years. The first regular session was to be on the third Monday of September, 1820; the next on the first Monday of November, 1821; the next on the first Monday of November, 1822; and thereafter once in every two years on the first Monday in November. Power was, however, given the legislature to appoint a different day. In all the states but two, Illinois and Tennessee, the legislatures met in annual sessions. Missouri followed these two states in adopting biennial meetings.[48] Called or extra sessions were also provided for. On extraordinary occasions the governor was given power to convene the general assembly in session by proclamation. The purposes of the session were to be set forth in the proclamation. This was part of the legislative powers of the governor and was possessed by the chief executives in fourteen states.[49] Hasty adjournment on the part of one house was guarded against by providing that neither house should, without the consent of the other, adjourn for more than two days at any one time, nor to any other place than to that in which the two houses had been sitting. Over half of the states had similar provisions regarding adjournment.[50]

The purely internal organization of the general assembly was determined partly by the constitution and was left partly

[45] *Shoemaker*, p. 47.
[46] *Mo. Const.*, IV. 18.
[47] *Shoemaker*, p. 75.
[48] *Mo. Const.*, III. 33; *Shoemaker*, p. 56.
[49] *Mo. Const.*, IV. 7; *Shoemaker*, p. 67.
[50] *Mo. Const.*, III. 20; *Shoemaker*, p. 45.

to the two houses. Each house was given the power to judge of the qualifications and elections of its own members and to appoint its own officers, except that the lieutenant governor by virtue of his office was president of the senate.[51] The presiding officer of the senate next in rank was the president pro tempore, who was elected by that body. The presiding officer of the house was the speaker, who was also elected.[52] All these officers, their names and duties, are met with in most of the state constitutions of that day. The constitution prescribed that a majority of each house should constitute a quorum to do business, but a smaller number might adjourn from day to day and might compel the attendance of absent members.[53] A number of state constitutions laid down almost identical rules.[54] Each house was given power to determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds of all the members elected, expel a member; but no member should be expelled a second time for the same cause. Each house was required to publish a journal of its proceedings, except such parts as might, in their opinion, require secrecy, and the yeas and nays on any question were to be entered on the journal at the desire of any two members.[55] Most of these regulations were set forth in a majority of the other state constitutions, and it is impossible to determine which one exerted the most influence in the framing of the Missouri constitution.[56] The constitution further provided that the doors of each house, and of committees of the whole, should be kept open, except in cases that might require secrecy. This provision regarding publicity of the legislature's proceedings was probably copied from the Illinois constitution.[57] Finally, each house was given the power to punish, by a fine not exceeding three hundred dollars or by imprisonment not exceeding forty-eight hours for one offense, any person not a member for dis-

[51] *Mo. Const.*, III. 17; IV. 15. This power of the state legislatures over the appointment of their officers was in general use over the nation.
[52] *Mo. Const.*, IV. 18.
[53] *Mo. Const.*, III. 17.
[54] *Shoemaker*, p. 42.
[55] *Mo. Const.*, III. 18.
[56] *Shoemaker*, pp. 42f.
[57] *Mo. Const.*, III. 19; *Shoemaker*, p. 43.

orderly or contemptuous behavior in the presence of and during the session of that house.[58] In this last respect the Missouri constitution went further than any other. No other state constitution expressly granted to the legislature the power to "fine" those, not members, for contempt of authority of that body.

The essential features of legislative process were laid down in the constitution. It was provided that bills might originate in either house and might be altered, amended or rejected, by the other house. Every bill was to be read on three different days in each house unless two-thirds of the house where the bill was pending dispensed with this rule. Having passed both houses, every bill was to be signed by the speaker of the house of representatives and by the president of the senate.[59] Before becoming a law, every bill must be presented to the governor for his approbation. If he signed it, it became a law. If he did not approve it, he was to return it together with his objections to the house of its inception. This house was to enter his objections on its journal and then proceed to reconsider the bill. If on a recorded aye and nay vote, a majority of the members elected to each house, voting separately, agreed to pass the bill over the governor's veto, it was to become a law. Further, if the governor failed to return a bill within ten days (Sunday excepted) after it had been presented to him, the bill was to become a law unless the general assembly had adjourned in the meantime.[60] Every joint resolution of the general assembly, except in cases of adjournment, was also to be presented to the governor, and was subject to the same regulations as obtained in the case of a bill.[61] Finally it was provided that the style of the laws of the State should be: "Be it enacted by the general assembly of the state of Missouri."[62] These essential features of legislative process, many of which obtained

[58] *Mo. Const.*, III. 19; *Shoemaker*, pp. 43f.
[59] *Mo. Const.*, III. 21.
[60] *Mo. Const.*, IV. 10.
[61] *Mo. Const.*, IV. 11; *Shoemaker*, pp. 70f.
[62] *Mo. Const.*, III. 36. An identical provision was contained in the constitutions of Indiana, Maryland, Ohio, Tennessee, and Vermont. (*Shoemaker*, p. 58.)

in other states, were probably copied from the constitutions of Illinois and Kentucky.[63]

The powers of the general assembly were broad. They embraced general legislative, delegated legislative, executive and judicial powers. The general legislative power or general law-making power was vested in the general assembly by the first section of article three of the constitution. This power was and still is vested in the legislature in every state. The delegated legislative powers of the general assembly consisted in the main of specific grants of power to legislate over certain subjects. Some of these grants were set forth in the article dealing with the legislature and others in separate articles.

The general assembly was commanded to direct, by law, in what manner, and in what courts, suits could be brought against the State.[64] Only four state constitutions expressly gave this power to the legislature.[65] The general assembly was commanded to pass laws to prevent free negroes and mulattoes from coming to and settling in Missouri; and to oblige slave-owners to treat their slaves humanely.[66] Further regarding slavery, the general assembly was given power to pass laws to prohibit the introduction of any slave who had committed a high crime in another state; to prohibit the introduction of any slave for the purpose of speculation or as an article of trade or merchandise; to prohibit the introduction of a slave, or a slave's offspring, that had been illegally imported into the United States; and to permit slave-owners to emancipate their slaves, saving the rights of creditors, provided the emancipators gave security that the emancipated slaves would not become public charges.[67] These provisions relating to slavery legislation, except the free negro and mulatto clause, were probably copied from the constitution of Alabama. The free negro clause was unique among constitutional provisions of that day,

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[63] *Shoemaker*, pp. 45, 70.

[64] *Mo. Const.*, III. 25.

[65] *Shoemaker*, p. 48. The four states were Alabama, Delaware, Kentucky, and Mississippi. Tennessee limited this right of bringing suits against the state to the citizens of Tennessee.

[66] *Mo. Const.*, III. 26.

[67] *Ibid.*

it was also remarkable for the great discord it later caused in Congress during the winter of 1820-1821.[68] Power was given the general assembly to change the tenure of the sheriff and coroner.[69] About half the states followed the elective tenure principle for these local officers, and half the appointive tenure.[70] The duties of the attorney general were placed under the regulation of the legislature. This was the rule in a majority of the states.[71]

The delegated legislative powers of the general assembly over the judiciary of the State were important. These powers were purely legislative and did not involve judicial powers. One of the most important of this class of powers was that of regulating, under certain constitutional restrictions, the jurisdiction of the courts. This principle of judicial regulation by the legislature was followed by a number of the states. The form in which it was incorporated in the Missouri constitution shows the influence of the constitutions of Alabama, Delaware and Kentucky.[72] Another important class of legislative powers over the judiciary was that of districting the State and of determining the place and time, for sessions of the courts. These last powers were subject to few restrictions. They seem to have been copied from the constitutions of Alabama, Delaware and Louisiana.[73] The general assembly was also empowered to establish inferior courts. No restriction was placed on this power. In practically all the states the legislature was expressly given this power.[74]

The delegated legislative powers of the general assembly also included important provisions relating to education, internal improvement, banks, the permanent seat of government, and the mode of amending the constitution. Each of these commanded a separate article.

The general assembly was given practically unlimited control over the education of the State. Schools were to be

[68] *Shoemaker*, p. 50.
[69] *Mo. Const.*, IV. 23.
[70] *Shoemaker*, p. 80.
[71] *Mo. Const.*, V. 18; *Shoemaker*, p. 99.
[72] *Mo. Const.*, V. 2, 6, 10, 11, 17; *Shoemaker*, pp. 87ff, 91ff, 98f.
[73] *Mo. Const.*, V. 5, 6, 7, 9, 17; *Shoemaker*, pp. 88ff., 91, 98f.
[74] *Mo. Const.*, V. 1; *Shoemaker*, p. 86.

encouraged and the national public school lands in each township were to be preserved for their use. One public school or more was to be established in each township as soon as practicable, where education was to be free to the poor. A state university was to be established and supported from the proceeds of a fund derived principally from the seminary lands granted by the United States. The purpose of this university was for the promotion of literature, and of the arts and science. Both the lands and the funds and endowments of the university were under the control of the general assembly and were to be safeguarded for the use and benefit of that institution. These educational provisions were related to those in other constitutions. A majority of the states had some constitutional provisions relating to education. These provisions differed greatly. The older states naturally said nothing of United States school lands and few said anything regarding a state university. In many of the newly created states such provisions were not placed in the constitutions but in the enabling act of Congress or in the state's acceptance of same. The state constitutions that seem to have been the most influential in the framing of the Missouri educational provisions, were those of Alabama and Indiana—both being practically identical with the Missouri constitution.[75]

Internal improvements were to be encouraged by the state government. The power of the general assembly in this field was practically unlimited. One of its duties was to ascertain the most proper objects of both road and water improvements. The general assembly was also directed to make an economic and systematic application of the funds appropriated for these purposes. The constitution of Alabama contained provisions practically identical with these.[76]

The delegated power of the general assembly over the establishing of a state bank was restricted. A conservative state banking policy was adopted. The constitution of only two states, Alabama and Indiana, had similar provisions on this subject and neither so safeguarded the state's finances as did

[75] *Mo. Const.*, VI.; *Shoemaker*, pp. 103ff.
[76] *Mo. Const.*, VII.; *Shoemaker*, p. 106.

Missouri.[77] The general assembly of Missouri was given power to incorporate only one banking company to be in operation at the same time. The general assembly could establish not exceeding five branches for this state bank and only one branch could be established at any one session of the general assembly. The capital stock of the state bank was not to exceed five millions of dollars, at least one-half of which was to be reserved for the use of the State.[78]

A certain amount of delegated legislative power relating to the militia was granted the general assembly. It was given power to change the tenure of those officers of the militia, excepting the officers of the staff, who were not appointed by the governor. The nearest approach to such a provision was a section in the constitutions of Tennessee and Indiana.[79] Most of the states, however, had similar provisions on this subject.

The authority of the general assembly over the permanent seat of government was set forth in a separate article, consisting of four sections. The general assembly, at its first session, was authorized to appoint five commissioners, one from each extreme part of the State and one from the center, for the purpose of selecting a place for the permanent seat of government. The duty of these commissioners was to select four sections of the land of the United States that had not been exposed to public sale. If the commissioners decided that the four sections of United States land so selected were not suitable, they were empowered to select such other place as they did regard would be proper, and they were to report on the second location at the time of their report on the first. No place was to be selected, however, that was not situated on the Missouri River and was not within forty miles of the mouth of the Osage River. The concurrence of at least three of the commissioners was necessary for all decisions made by them. To the general assembly was given the power of making final decision. If the latter body accepted the first location the commissioners were authorized to lay out a town thereon under the direction of the general assembly; if the general assembly accepted the second location,

[77] *Shoemaker*, pp. 107ff.
[78] *Mo. Const.*, VIII.
[79] *Shoemaker*, p. 110; *Mo. Const.* IX.

the general assembly was empowered to authorize the commissioners to purchase any quantity of land, not exceeding six hundred and forty acres, for this purpose. The place selected was to be the permanent seat of government of Missouri from and after October 1, 1826. The constitution of no other state contained similar provisions on this subject. The constitutions of Alabama, Kentucky and Louisiana did, however, expressly provide that the seat of government could be changed by the legislature. The bitter fight in the Missouri convention over this question was probably the main reason for these detailed clauses in the constitution.[80]

The great legislative power of proposing and adopting amendments to the constitution was also expressly delegated to the general assembly. That body, on a two-thirds vote of each house, could propose amendments without restriction. Such proposed amendments were then to be published three different times in Missouri, at least twelve months before the next general election. At the first session of the general assembly after such general election, that body, on a two-thirds aye and nay vote of each house, was given power to adopt any proposed amendments or to reject them. It was provided that both in proposing and ratifying amendments they should be read on three several days in each house. Of the twenty-three state constitutions of that day all except five, New Jersey, New York, North Carolina, Pennsylvania and Virginia, provided some method of amendment. In fourteen of these the legislature on its own initiative proposed the question of amendment. The vote required differed from a majority of one house, as in Connecticut, to a two-thirds vote of both houses. No general rule governed the manner of ratification. Four states, Delaware, Georgia, Maryland and South Carolina, confided this power in the legislature alone after an intervening election had taken place; two, Alabama and Connecticut, in that body together with a popular vote. The larger number, Illinois Indiana, Kentucky, Louisiana, Massachusetts, Mississippi, Ohio, and Tennessee, provided for the people voting on a convention, which body had all powers of amending and revising the con-

[80] *Mo. Const.*, XI.; *Shoemaker*, pp. 113ff.

stitution. One state, New Hampshire, provided for a convention and for ratification by the people; another, Maine, ratification by a popular vote; and one, Vermont, left ratification to the legislature whose members were to be instructed. Some states provided so difficult a process as to render amendment improbable, and in fact some state constitutions of that time were never altered but were replaced with new ones. Maryland alone provided in her constitution an easier amendment clause than Missouri.[81]

The executive power of the general assembly was broad if interpreted in connection with its legislative powers, and limited if considered strictly from the specific executive powers granted. Even from the latter viewpoint, however, these powers were greater and wider in scope than those retained today by the legislature. The constitution set forth the general rules that the appointment of all officers, not otherwise directed by it, should be made in such manner as might be prescribed by law.[82] This by implication placed a great general executive power in the hands of the general assembly and, in a less degree, the governor, that in many states was expressly given to the governor alone. This general rule obtained in the constitutions of nine states, Kentucky, Louisiana, Massachusetts, New Hampshire, Pennsylvania, Tennessee, Indiana, Mississippi and Ohio. In the other states either such power of appointment was given to the governor or no express mention was made regarding it.[83] The constitution, by way of regulation, provided that when any officer should have been appointed by the joint vote of both houses, or by the separate vote of either house, the votes should be publicly given *viva voce*, and entered on the journals; the whole list of members should be called; and the names of absentees should be noted and published with the journal. The constitutions of only three states, Alabama, Kentucky and Pennsylvania, contained provisions similar to these.[84] In the general assembly was vested the power of

[81] *Mo. Const.*, XII.; *Shoemaker*, pp. 117f.
[82] *Mo. Const.*, III. 32.
[83] *Shoemaker*, pp. 54f.
[84] *Mo. Const.*, III. 22; *Shoemaker*, p. 22.

appointing, by a joint vote of both houses, the state treasurer. This was the general rule in nearly all the states.[85] These executive powers were vested jointly in the senate and the governor. The appointment of the state auditor, attorney general, and the secretary of state was placed in the hands of the governor acting "by and with the advice and consent of the senate." In the three states that provided for an auditor, his tenure was under the power of the general assembly; in those states that provided for an attorney general, of which Alabama, Kentucky and Mississippi were the models for Missouri, the general rule was the appointive tenure; and in the eighteen states that provided for a secretary of state, seven—Delaware, Illinois, Kentucky, Mississippi, Louisiana, Pennsylvania and Tennessee—made his tenure appointive by the governor, and the remaining states made it appointive by the general assembly or elective by the people.[86]

The judicial power of the general assembly extended to three subjects—impeachments, addresses for the removal of certain officials, and two classes of contested elections. The constitution provided that all state officials and judges should be liable to impeachment for any misdemeanor in office; but that judgment in such case should not extend farther than removal from office and disqualification to hold any state office. The party impeached, whether convicted or acquitted, was liable to be indicted, tried and punished according to law. The house of representatives was given the sole power of impeachment. All impeachments were to be tried by the senate, and when sitting for that purpose, the senators were to be on oath to do justice according to law and evidence. When the governor was tried, the presiding judge of the supreme court was to preside. No person was to be convicted without the concurrence of two-thirds of all the senators present. The majority of state constitutions had similar provisions on this subject. The constitution of the United States or of Connecticut was probably the pattern followed by Missouri.[87] The general assembly was

[85] *Mo. Const.*, III. 31; *Shoemaker*, p. 54.
[86] *Mo. Const.*, IV. 12, 21; V. 18; *Shoemaker*, pp. 71, 77f, 99.
[87] *Mo. Const.*, III. 29, 30; *Shoemaker*, pp. 52f.

given power to remove supreme and circuit court judges and the chancellor from office on the address of two-thirds of each house to the governor for that purpose. Each house was to state in its journal the cause of the removal and give notice of same to the accused. The judge or chancellor whose removal was requested was given the right to be heard in his defense according to law, but no judicial officer was to be removed in this manner if he might have been impeached. A majority of the states provided for removal of judges in this manner. The constitution of Illinois was the model followed by Missouri.[88] Finally the judicial power of the general assembly extended to deciding, by a joint vote of both houses, contested elections of governor and lieutenant governor. This principle was followed by ten states, of which Illinois was the model for Missouri.[89] The general assembly by a joint vote of both houses, was also given power to decide between those candidates for governor that had polled the highest votes, who should be governor in case two or more persons had received an equal number of votes and a higher number than any other person.[90]

The limitations placed on the general assembly fall naturally into two classes—expressed and implied. The latter included all those grants of power made to the executive or judicial departments and those powers and regulations that pertained in a specific or restrictive sense to the legislative department. Powers granted to the first two departments were by implication restrictions on the legislature, since by virtue of the state legislature's residuary powers such executive or judicial powers would otherwise have been under the control of the legislature. Further, those powers of the legislature that were granted in a specific manner and those regulating provisions governing the organization and procedure of the legislature, were by implication limitations or probibitions on that body from exercising such powers or following such provisions in different manner. Since all these implied limitations on the general assembly naturally make their appearance in considering the three de-

[88] *Mo. Const.*, V. 16; *Shoemaker*, pp. 97f.
[89] *Mo. Const.*, IV. 20; *Shoemaker*, pp. 76f.
[90] *Mo. Const.*, IV. 3.

partments, they need not be enumerated in a separate discussion.[91]

The expressed limitations on the general assembly included a variety of subjects. Most of these were set forth in a separate article called "Declaration of Rights," the majority of the others were placed in the article on the legislative power. The latter will be considered first.

One of the most important class of limitations on the general assembly related to slaves. Certain implied, perhaps expressed limitations were set forth in those slavery provisions that made it commandatory on the legislature to pass certain slave laws. Since these have been considered under the legislative powers of the general assembly they will not receive double treatment. Some other slavery limitations were, however, set forth that were without a doubt, expressed ones.

The general assembly was prohibited from passing laws for the emancipation of slaves without the consent of their owners, or without paying them, before such emancipation, a full equivalent for such slaves. It was prohibited from passing laws to prevent *bona fide* immigrants to Missouri, or actual settlers therein, from bringing from any of the states or territories, such persons as were there deemed slaves, so long as such persons were regarded slaves in this State. The constitutions of Alabama, Kentucky and Mississippi had similar limitations regarding slavery legislation.[92] Other slavery limitations that were binding on the legislature and also on the other two departments of government were these: in criminal prosecutions, slaves were guaranteed trial by jury; in capital offenses, a convicted slave was to suffer the same punishment as would apply to white persons under the same circumstances; counsel was to be assigned for the defense of slaves in the courts; any person who should maliciously deprive of life or dismember a slave, was to suffer such punishment as would be inflicted for a like offense if committed on a free white person. No other state constitution went so far in protecting the rights of the

[91] It was not thought necessary in a work of this character to consider those implied limitations on the legislature that arise from judicial interpretation.

[92] *Mo. Const.*, III. 26; *Shoemaker*, pp. 49f.

slave as this one. In only three states, Alabama, Kentucky, and Mississippi, did the constitution expressly give protection to a slave when prosecuted for crime. These three states and Georgia also regarded high crimes against slaves in the same light as though against free whites.[93]

The general assembly was limited in its power to establish new counties. No county then established was to be reduced, by the establishment of new counties, to less than twenty miles square, nor was any new county to be formed that contained less than four hundred square miles. The constitution of Ohio alone contained an identical provision; a similar provision was, however, included in the constitutions of Alabama, Indiana, Mississippi and Tennessee.[94]

A limitation was placed on the general assembly under a power granted it regarding the revision of the laws. It was provided that a complete revision of all the laws of the state was to be made within five years after the adoption of the constitution and subsequent revisions at the end of every ten years. The constitution of only one state, Alabama, contained a similar provision.[95]

The general assembly was prohibited from interfering with the primary disposal of United States soil or with any regulation of Congress for securing the title in such soil to the *bona fide* purchasers. It was further prohibited from imposing a tax on lands the property of the United States or from placing a higher tax on lands in Missouri owned by non-residents than on lands owned by residents. And the constitution, accepting and complying with the Enabling Act, declared the State had concurrent jurisdiction on the Mississippi River or any other river as far as such river or rivers formed part of its boundary and prohibited the general assembly from levying any tax, duty, impost or toll, on such streams or on other navigable streams tributary to the Mississippi River. No state constitution contained provisions identical with these. The nearest approach was in the constitution of Tennessee. However, in most of the en-

[93] *Mo. Const.*, III. 27, 28; *Shoemaker*, pp. 50f.
[94] *Mo. Const.*, III. 34; *Shoemaker*, pp. 56f.
[95] *Mo. Const.*, III. 35; *Shoemaker*, pp. 57f.

abling acts of the western states, similar provisions were set forth. Their incorporation in these acts probably accounts for their omission in the state constitutions.[96]

The limitations on the general assembly that were included in the "Declaration of Rights" were also limitations or implied prohibitions on the other two departments. They were, however, of special force with reference to the general assembly since they dealt largely with subjects that were intended to be protected from legislative alteration. The "Declaration of Rights" included those provisions that guarded the rights and privileges of individuals. It dealt with those fundamental principles of individual liberty and political rights, many of which had their inception, or were supposed to have had, in the Magna Charta. Originally purposed to guard the individual against executive encroachments, their scope was broadened to act as a safeguard against all governmental impositions and especially against legislative action. Having a common origin in English history and a similar development in American, the provisions of the various "Bills of Rights," "Declaration of Rights" and "General Provisions," of the different states, presented in 1820 and still present today a remarkable uniformity of purpose and wording. All the states in 1820, except New Jersey and New York, provided for a bill of rights in their constitutions. In nine states it was called a "Declaration of Rights," in two "Bill of Rights," in one "General Provisions," and in the others had no name but was placed under a separate article in the constitution.

The Missouri "Declaration of Rights" consisted of a short preamble and twenty-two sections. Since these sections were as concisely and as clearly stated as possible in the constitution, an exposition of all of them is unnecessary. The general principles enunciated were these: that all political power was vested in and derived from the people; that the power of regulating the government and of altering the constitution belonged to the people; that the people had a right to assemble and petition the government for redress of grievances; that they also had the right to bear arms in defense of themselves and of their State; that

[96] *Mo. Const.*, X.; *Shoemaker*, pp. 111f.

religious equality and freedom of concience were not to be disturbed; no religious corporation was to be established; that all elections were to be free and equal; that the courts should be open to all; that private property ought not to be taken for public use without just compensation; that the right of trial by jury and the ordinary process of legal procedure should remain inviolate; that the privilege of the writ of habeas corpus should not be suspended except in cases of rebellion or invasion; that excessive bail should not be required, or excessive fines imposed, or cruel punishments inflicted; that unreasonable searches and seizures of person or property were prohibited; that no person could be attainted of treason or felony by the general assembly; that no conviction should work corruption of blood or forfeiture of estate; that the freedom of speech and the press should not be infringed; that no *ex post facto* law should be passed; that no debtor should be imprisoned for his debts if he had surrendered his property according to law; that no priest or preacher should be forced to bear arms; that all property subject to taxation should be taxed according to its value; that no title of nobility should be granted; that emigration from the State should not be prohibited; that the military was subordinate to the civil power; that no soldier should in times of peace be quartered in any house without the consent of the owner; and that no appropriation for the army should be made for a longer period than two years. The only provision of the foregoing that was not included in at least half a dozen other state constitutions was the one relating to taxation. The constitutions of only three other states, Alabama, Illinois and Maryland, had a similar provision.[97]

The executive department, provided for in the Missouri constitution of 1820, was composed of the governor, lieutenant-governor, adjutant general, auditor, secretary of state, and treasurer. These officers and all other state officers, both civil and military, were required, before entering on their duties, to take an oath to support the State and National constitutions and to demean themselves faithfully in office. The constitutions of Alabama, Connecticut, Illinois, Maine, Indiana, Mississippi and Ohio contained similar provisions. All of these

[97] *Mo. Const.*, XIII.; *Shoemaker*, pp. 119-132.

constitutions were of the nineteenth century. No constitution of the eighteenth century required a state officer to take an oath to support the United States constitution but practically all required an oath to support the state constitution. Ohio was the first state to start this and with the single exception of Louisiana, it was followed by all the other states that framed constitutions between 1802 and 1820.[98]

The supreme executive power was vested in a chief magistrate styled "The Governor of the state of Missouri." In providing for a single head form of a chief executive Missouri followed the general rule that obtained among the states.[99]

The tenure of the governor was elective by a plurality vote of the qualified electors. The manner and time of his election were the same as obtained for representatives. When two or more persons received an equal number of votes, and a higher number than any other person, the election was to be decided between them by a joint vote of both houses of the general assembly at their next session. Eleven state constitutions contained similar provisions. Five other states, Maine, Massachusetts, New Hampshire, Vermont and Connecticut, provided for an election by an absolute majority; while six other states, Georgia, Maryland, New Jersey, North Carolina, South Carolina and Virginia, still retained the old method of appointment by the legislature; and one, Louisiana, combined the election method by the people with appointment by the legislature.[100]

The term of the governor was four years and he was ineligible for the next four years after the end of his term of service. The first state to provide a similar term was Kentucky, which was probably influenced by the United States constitution. This was followed by Louisiana, Illinois and Missouri. Ten states still held to the early rule of a one year term, six to a two year term, and four to a three year term.[101]

The qualifications of the governor embraced age, citizenship, and residence requisites. He was required to be at least

[98] *Mo. Const.*, III. 32; *Shoemaker*, pp. 54f.
[99] *Mo. Const.*, IV. 1; *Shoemaker*, p. 61.
[100] *Mo. Const.*, IV. 3; *Shoemaker*, pp. 63f.
[101] *Mo. Const.*, IV. 3; *Shoemaker*, pp. 63f.

thirty-five years of age. This was a high age qualification. At that time the constitutions of Kentucky, Louisiana and the United States alone provided for the same. A majority of the states placed the age minimum at thirty years; two states, Maryland and Tennessee, at twenty-five years; and six states, Massachusetts, New Jersey, New York, Rhode Island, Virginia and Vermont, had no provision on this point. It was further required that the governor be a natural born citizen of the United States, or a citizen at the adoption of the United States constitution, or "an inhabitant of that part of Louisiana included in the state of Missouri at the time of the session thereof from France to the United States." This was also a high qualification. Besides the United States constitution, from which this provision was obviously patterned, the constitutions of Alabama, Illinois and Maine alone made natural or native citizenship of the United States a necessary requisite. Only seven other states, Delaware, Georgia, Indiana, Kentucky, Louisiana, Mississippi and Ohio, made any kind of United States citizenship a requisite. Finally the governor must have resided in the State for at least four years next before his election. Eighteen of the states required a state residence qualification, varying from ten years in South Carolina to two years in Illinois. Four states, Alabama, Ohio, Tennessee and Vermont, provided a four year state residence.[102]

The compensation of the governor was under the control of the general assembly with two restrictions on this control, the salary of the governor was not to be increased or diminished during the governor's continuance in office and it was not to be less than two thousand dollars a year. Eighteen states made some mention in their constitutions of the compensation of the governor. In no state constitution, however, was a minimum amount mentioned. In fact one state, Tennessee, placed the maximum salary at only seven hundred and fifty dollars. In no state was there such a liberal provision in the constitution relating to the salary of the governor.[103]

[102] *Mo. Const.*, IV. 2; *Shoemaker*, pp. 61ff.
[103] *Mo. Const.*, IV. 13; *Shoemaker*, pp. 71f.

The succession to the office of governor was set forth in detail. When the office became vacant by death, resignation, absence from the State, removal from office, refusal to qualify, impeachment or otherwise, the lieutenant governor, or, in case of like disability on his part, the president *pro tempore* of the senate, or, if there was no president *pro tempore* of the senate, the speaker of the house of representatives, was authorized to possess all the powers and receive the same compensation as the governor, until such vacancy was filled by a new or the old governor. When the office of governor became permanently vacant, the person temporarily filling that office was commanded to cause an election to be held to fill such vacancy, giving three months notice thereof. The person elected was not rendered ineligible to succeed himself. If, however, the vacancy happened within eighteen months of the end of the term, no election was to be held. The succession to the governorship was similarly provided for in most of the states. But only two states, Alabama and Illinois, had provisions in their constitutions similar to the foregoing provision calling for a separate election to fill such vacancy.[104]

The powers and duties of the governor fall naturally into four classes—executive and civil administrative functions, military, legislative and judicial. These powers and duties were specifically set forth and were not, as in some of the cases of the general assembly, possessed through residuary jurisdiction.

The executive and civil administrative functions of the governor were few but important. He was directed to distribute the laws and to see that they were faithfully executed. He was further empowered to be a conservator of the peace throughout the State. These general executive powers of the governor were granted him in a majority of the states.[105] He was given power to fill by appointment vacancies in offices, and persons so appointed were to continue in office until a successor had been duly appointed, or elected, and qualified according to law. Most of the states had a similar provision in

[104] *Mo. Const.*, IV. 16, 17; *Shoemaker*, pp. 74f.
[105] *Mo. Const.*, IV. 8; *Shoemaker*, p. 68.

their constitutions.[106] The governor was commanded to issue writs of election to fill vacancies in the general assembly. A number of the states placed this duty on the governor.[107] The governor was given the power of appointing, by and with the advice and consent of the senate, the auditor, attorney general, secretary of state, and all state judges. This was a greater power than was possessed by the governor in most of the states.[108]

The military powers of the governor made him the commander in chief of the militia and navy of the state, except when they were called into the service of the United States. He was not required to command in person unless advised to do so by a resolution of the general assembly. He was also given power to appoint the adjutant general, and all other militia officers, whose appointments were not otherwise provided for in the constitution. Similar provisions were set forth in the constitutions of practically all states.[109]

The legislative functions of the governor embraced his veto power on both bills and joint resolutions, his power to convene the general assembly in special session, and his power to send messages to that body. Only the last power has not been considered. The constitution provided that from time to time the governor should give to the general assembly information relative to the state of the government and should recommend to their consideration such measures as he deemed necessary and expedient. This legislative power was possessed by the chief executive in fifteen states.[110]

The expressed judicial functions of the governor were confined to his power to remit fines and forfeitures, and, except in cases of impeachment, to grant reprieves and pardons. These powers were possessed by the governor in nearly all the states.[111]

The lieutenant governor was elected at the same time, in the same manner, for the same term, and was required to pos-

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[106] *Mo. Const.*, IV. 9; *Shoemaker*, p. 68.
[107] *Mo. Const.*, III. 9; *Shoemaker*, p. 34.
[108] *Mo. Const.*, IV. 12, V. 18, IV. 21, V. 13; *Shoemaker*, pp. 71, 99, 77f, 95f.
[109] *Mo. Const.*, IV. 5, IX. 3; *Shoemaker*, pp. 66, 110.
[110] *Mo. Const.*, IV. 7; *Shoemaker*, p. 67.
[111] *Mo. Const.*, IV. 6; *Shoemaker*, 66.

sess the same qualifications as the governor. He was president of the senate by virtue of his office. In committee of the whole senate he was privileged to debate on all questions and on an equal division he was given the casting vote, both in the senate and in joint votes of both houses. The constitutions of ten states provided for a lieutenant governor: his duties were similar in all these. Illinois and Kentucky were probably the models followed by Missouri in framing these provisions.[112]

The adjutant general was appointed by the governor. Neither his term nor his duties were prescribed. In practice he was the actual head of the militia and his term depended on the good will and the term of the governor.[113]

The auditor of public accounts was appointed for four years by the governor and senate. His duties were to be prescribed by law and his office was to be kept at the seat of government. Only three states provided for an "auditor," and in each his tenure was appointive by the legislature. The functions of auditor were, however, exercised by a separate officer in many of the other states. His term in these states varied from one to three years.[114]

The attorney general was appointed for four years by the governor and senate. His duties were to be prescribed by law. The constitution patterned this provision after the constitutions of Alabama, Kentucky and Mississippi. The appointive tenure was the general rule followed by most of the states that provided for such an office. His term was three years in some and during good behavior in others.[115]

The secretary of state was the most important executive officer after the governor. He was appointed for four years by the governor and senate, and it was expressly stated that he was subject to removal by impeachment processes. His duties were largely enumerated. He was to keep a register of all the official acts of the governor and when necessary attest them; he was commanded to lay same, together with all papers relative thereto, before either house of the general assembly,

[112] *Mo. Const.*, IV. 14, 15; *Shoemaker*, pp. 72f.
[113] *Mo. Const.*, IX. 3; *Shoemaker*, p. 110.
[114] *Mo. Const.*, IV. 12; *Shoemaker*, pp. 71f.
[115] *Mo. Const.*, V. 18; *Shoemaker*, p. 99.

whenever requested; and he was to perform such other duties as might be enjoined on him by law. He was further charged with procuring a seal of state, with such emblems as should be directed by law. This seal, called the "Great Seal of the State of Missouri," was under the custodianship of the secretary of state. All official acts of the governor, his approbation of the laws excepted, were to be thereby authenticated. Finally, the returns of all elections of governor and lieutenant governor were to be made to the secretary of state. Eighteen states made provision in their constitutions for a secretary of state. Three of these, Kentucky, Louisiana and Tennessee, were identical with the Missouri constitution. Four other states, Delaware, Illinois, Mississippi and Pennsylvania, made his tenure appointive by the governor. The remaining states either made his tenure appointive by the legislature or elective by the people, which latter obtained in Connecticut and Maine. Besides the first three states, only two others made his term four years, Indiana and South Carolina. With the exception of Virginia, which made his term during good behavior, the remaining states were equally divided in providing a term of one, two, or three years. His duties were similar in most of the states. All the states made some provision in their constitutions for a seal of state. It went by different names. In the majority of the states the custodian was the governor; in Georgia and Connecticut it was the secretary of state.[116]

The state treasurer was appointed biennially by joint vote of the two houses of the general assembly. His office was at the seat of government. No money was to be drawn from the treasury but in consequence of lawful appropriations. He was required to keep an accurate account of the receipts and expenditures of the public money, which account was to be published annually. The constitutions of only Georgia, Illinois and Tennessee provided a two year term for the treasurer. The appointive tenure by the legislature was the general rule in nearly all the states. The financial duties and regulations prescribed were also the same in most of the states.[117]

[116] *Mo. Const.*, IV. 19, 21, 22; *Shoemaker*, pp. 77ff.
[117] *Mo. Const.*, III. 31; *Shoemaker*, pp. 53f.

The judicial powers were vested in a supreme court, in a chancellor or a court of chancery, in circuit courts, in such inferior tribunals as the general assembly might establish, and in local justices of the peace.[118] The system of organization was hierarchical both in form and in character of jurisdiction. Only the first three bodies, which were essentially state courts, received any considerable attention in the constitution, the others, which were local courts, being subject to the control of the general assembly. Not one, however, was free from a considerable degree of control on the part of the legislature. The only constitutional provisions that seemingly applied to all five courts related to clerks and writs. The courts were empowered to appoint their clerks, who were to hold office during good behavior. For any misdemeanor in office they were liable to be tried and removed by the supreme court as should be directed by law. Nearly half of the state constitutions had similar provisions.[119] The Missouri constitution provided that all writs and processes should run, and all prosecutions should be conducted, in the name of the "State of Missouri;" and that all writs should be tested by the clerk of the court from which they should issue, and all indictments should conclude, "against the peace and dignity of the state." A majority of the state constitutions set forth similar rules. Some used the word, "People," some "Commonwealth," but most used "State." [120]

The judges of the supreme court and the circuit courts, and the chancellor, were all subject to the same constitutional provisions regarding their tenure, term, compensation, qualification and removal. Their tenure was appointive by the governor and the senate. All the states except Georgia, and in part Indiana, provided for an appointive tenure for the judges: about half confided this power in the legislature and half in the governor and senate or council.[121] The tenure was during good behavior. All of the states except Georgia, Indiana, Ohio and Connecticut, made the same provision.[122] The

[118] *Mo. Const.*, V. 1, 12, 17.
[119] *Mo. Const.*, V. 15; *Shoemaker*, p. 97.
[120] *Mo. Const.*, V. 19; *Shoemaker*, pp. 99f.
[121] *Mo. Const.*, V. 13; *Shoemaker*, pp. 94f.
[122] *Ibid.*

salary was not to be lower than two thousand dollars a year and was not to be diminished during the holding of office. Practically all the states provided that either the salary was to be adequate or was not to be diminished during office. Missouri followed the general rule that obtained in all of these cases except that she stated definitely what the minimum salary was. Illinois was the only other state that did this, and Louisiana was the only state that placed the salary at a definite figure.[123] The only qualification that applied to these judges related to age. The minimum age qualification was thirty years; the maximum was sixty-five years, over which no judge was to exercise the duties of his office. No other state constitution contained a minimum age qualification for judges and only five, Alabama, Connecticut, Maine, Mississippi and New Hampshire, provided for a maximum one. The actual qualifications of the judges during the early state period were uniformly high but this was due either to statutory provisions or to custom.[124] The removal of the judges was provided for either by impeachment proceedings by the house of representatives and by the senate, or by address of the general assembly to the governor. Both of these functions have been considered under the judicial powers of the legislature.[125]

Besides these general rules applying to the organization of the three higher courts, the constitution also set forth specific provisions regarding both the organization and the jurisdiction of each court.

The supreme court was composed of three judges, any two of whom constituted a quorum. These judges were to be conservators of the peace throughout the State. A majority of the states provided for a supreme court of some kind although under various names. No rules obtained in the states regarding the composition of this court. The number of judges varied from three to eight. In all cases either two or a majority of the judges constituted a quorum, and in many states they were

[123] *Ibid.*
[124] *Mo. Const.*, V. 14; *Shoemaker*, p. 96.
[125] See *supra.*

expressly made conservators of the peace. The constitution of Indiana was probably the model followed by Missouri.[126]

The general jurisdiction of the supreme court, except in cases otherwise directed by the constitution, was appellate and was co-extensive with the State. The constitution gave the court general superintending control over all inferior courts. It was also given the power to issue writs of habeas corpus, mandamus, quo warranto, certiorari and other remedial writs, and to hear and determine the same. The constitutions of Alabama, Georgia and Tennessee gave the same jurisdiction to their supreme courts. The Indiana constitution contained a similar provision but did not expressly give the supreme court power to issue remedial writs.[127] The place and time of sessions were largely under the control of the general assembly. It was provided that the state should be divided into convenient districts, not to exceed four, in each of which the supreme court was to hold two sessions annually, at such place as the general assembly should appoint; and when sitting in either district, that court should exercise jurisdiction over causes originating in that district only. It was further provided, however, that the general assembly might, at any time, direct by law that the supreme court hold its sessions at one place only. Few state constitutions made mention of these subjects. The constitution of Louisiana bore the nearest resemblance to Missouri's in this respect.[128]

The composition of the court of chancery was a chancellor. The jurisdiction of this court was co-extensive with the State. The times and places of holding its sessions were to be regulated in the same manner as those of the supreme court. It was to have possessed original and appellate jurisdiction in all matters of equity, and a general control over executors, administrators, guardians and minors, subject to appeal, in all cases, to the supreme court, as should be provided by law. Only seven states, Alabama, Delaware, New Jersey, Vermont, Maryland, Pennsylvania and Mississippi, made any express provision in

[126] *Mo. Const.*, V. 4; *Shoemaker*, p. 88.
[127] *Mo. Const.*, V. 3; *Shoemaker*, p. 87.
[128] *Mo. Const.*, V. 5; *Shoemaker*, pp. 88f.

their constitutions for a chancellor or a court of chancery. Regarding both the extent and kind of jurisdiction of this court, Missouri followed the Delaware constitution.[129]

The circuit courts were modeled on those of the territorial period. Each was composed of one circuit judge. The State was to be divided into convenient circuits, for each of which a judge was to be appointed. Each circuit judge was required to reside in his circuit and was to be a conservator of the peace in that circuit. The name "circuit court" appeared only in the constitutions of Illinois, Indiana and Alabama. The functions of this court were, however, exercised in other states by like courts that differed in name only.[130] The reason the number of circuits were not fixed in the constitution was probably due to the obvious necessity that would arise of making changes. The jurisdiction of this court extended to both criminal and civil cases. It was given jurisdiction over all criminal cases that should not be otherwise provided for by law, and exclusive original jurisdiction in all civil cases not cognizable before justices of the peace, until otherwise directed by the general assembly. The circuit court was further authorized to exercise a superintending control over all inferior tribunals that might be established and over justice of the peace in each county in its respective circuit. The time of sessions was impliedly left to the regulation of the general assembly. The place of session was expressly under the selection of that body with the limitation that one place was to be selected in each county. The provisions regarding the jurisdiction of the circuit court were probably copied from the constitution of Alabama; those regarding the control of this court over inferior tribunals were patterned after the Ohio and Pennsylvania courts.[131] The circuit court was also given jurisdiction in matters of equity. Its decision in such matters was not final, being subject to appeal to the court of chancery. This equity jurisdiction was, further, not vested permanently in the circuit court, but only until the general assembly should establish inferior courts of chancery.

[129] *Mo. Const.*, V. 9, 10; *Shoemaker*, pp. 86, 90f.
[130] *Mo. Const.*, V. 7; *Shoemaker*, pp. 86, 90.
[131] *Mo. Const.*, V. 6, 8; *Shoemaker*, pp. 89f., 90f.

In giving the circuit court this kind of jurisdiction the Missouri constitution followed the constitutions of Alabama and Delaware.[132]

The local courts embraced "inferior tribunals" and courts of justices of the peace. These two courts were subject in every express way to the control of the legislature. The constitution provided that inferior tribunals should be established in each county. These courts combined the powers of county courts and probate courts. They were to transact all county business, appoint guardians, grant letters testamentary and of administration, and settle the accounts of executors, administrators and guardians. The constitution further provided that in each county there were to be appointed as many justices of the peace as the public good required. Their power and duties, and term were to be regulated by law. A number of state constitutions provided for the establishing of inferior tribunals. Of these, the constitutions of Kentucky and Mississippi were the models for Missouri.[133] A majority of the states that provided in their constitution for justices of the peace, made the tenure appointive and the term from three to nine years. Their number and duties were open to statutory regulation. The constitutions of Illinois and Kentucky were the models for Missouri on this subject.[134]

The constitution while enlarging on the frame of state government, its organization, powers, duties and limitations, paid little attention to the frame of local government. The form and character of the latter was in general to be determined by the general assembly. There were, however, four limitations on this power, the first three of which have been considered. Inferior tribunals were to be established in each county for transacting county business, justices of the peace were to be appointed in each county, no county was to be established with less than four hundred square miles area and no county reduced to less than that size, and a sheriff and a coroner were to be provided for in each county.

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[132] *Mo. Const.*, V. 11; *Shoemaker*, p. 92.
[133] *Mo. Const.*, V. 12; *Shoemaker*, p. 93.
[134] *Mo. Const.*, V. 17; *Shoemaker*, pp. 98f.

There were to be appointed in each county a sheriff and a coroner, who, until the general assembly should otherwise provide, should be elected by the qualified voters at the time and place of electing representatives. Their term was two years, and they were to hold office until a successor had been duly appointed and qualified. They were subject to removal for misdemeanor in office and were ineligible four years in any period of eight years. They were required to give security for the faithful discharge of the duties of their office, as prescribed by law. Whenever a new county was established, the governor was to appoint for it a sheriff and a coroner, who were to continue in office until the next election and a successor had been duly qualified. When vacancies happened in the office of either, they were to be filled by appointment of the governor and those so appointed were to hold office until successors had been duly qualified. Such appointees were not, however, rendered ineligible for the next succeeding term. In tie and contested elections of either office the circuit court was given the power of deciding who should hold the office.[135]

All the states made some provision for a sheriff in their constitutions and a number for a coroner. Thirteen states provided for both officers in each county; the remaining states either provided for a sheriff or sheriffs alone, or for two sheriffs and two coroners. About half the states had the elective tenure as applied here and the remainder the appointive. Seven states allowed a two year term; six, a one year term; five, a three year term; one, a four year term; and the remainder left this point open. A number of constitutions made these officers ineligible for certain lengths of time. Only two state constitutions, Connecticut and Vermont, required these offices to give security, however in Maryland the qualifications for sheriff were high. The governor's power of appointment in certain contingencies was one exercised in actual practice in a number of states although not provided for by constitutional provisions. In the case of tie and contested elections the local courts were not given powers of decision in any other state constitution. However, in Kentucky, Tennessee and Virginia, these courts

[135] *Mo. Const.*, IV. 23, 24, 25.

were the determining factors in the appointment of the sheriff and coroner, and in Tennessee they were the sole appointers. It was natural that when Missouri adopted the elective tenure for these offices, contested elections and ties were left to be determined by the old judicial bodies having such full power in these three kindred states. The local government provisions in the Missouri constitution seem to have been influenced by the constitutions of Alabama, Connecticut, Delaware, Georgia, Illinois, Kentucky, Tennessee and Virginia.

This concludes the study of the origin and the analysis of the content of the Missouri constitution. A "Schedule" appended to that document contained provisions and arrangements for the transition from the territorial government to a state regime. Being of a temporary nature, this schedule is not strictly a part of the constitution. In general this schedule did not differ from those in other state instruments. It treated of five main subjects: the territorial governmental processes and officers that were to hold over up to or after the inauguration of the state government; the temporary seat of government of the State; the apportionment of members for the first state general assembly; the first state election; and the governor's seal. It provided that legal instruments and actions at law then in force were to continue effective; that all territorial laws not repugnant to the constitution were to operate until they expired by their own limitations, or were altered or repealed by the general assembly; and that all territorial officers were to hold office and receive compensation until superseded by state officials.

It provided that the first meeting of the general assembly was to be at St. Louis, with power to adjourn to any other place; that that body at its first session was to fix the temporary seat of government until October 1, 1826; and that it had power to fix the compensation of its members.

The following apportionment was made for the forty-three representatives to the first general assembly: Howard, eight; Cooper, four; Montgomery, two; Lincoln, one; Pike, two; St. Charles, three; St. Louis, six; Franklin, two; Jefferson, one; Washington, two; Ste. Genevieve, four; Cape Girardeau, four;

New Madrid, two; Madison, one; and Wayne, one. Persons who had resided in the state five months previous to the adoption of the constitution and who were otherwise qualified according to the provisions of the constitution were eligible to the house of representatives and to the senate. For the first election of senators, the State was divided into nine districts and the fourteen senators were apportioned as follows: Howard and Cooper, four senators; Montgomery and Franklin, one; St. Charles, one; Lincoln and Pike, one; St. Louis, two; Washington and Jefferson, one; Ste. Genevieve, one; Madison and Wayne, one; Cape Girardeau and New Madrid, two.

David Barton, president of the convention, was directed to issue writs of election to the sheriffs of the several counties, requiring them to cause an election to be held on the fourth Monday in August, 1820, for a governor, a lieutenant governor, a representative in Congress, for the residue of the Sixteenth Congress, a representative for the Seventeenth Congress, senators and representatives for the general assembly, sheriffs and coroners. Any person who had resided in the State at the adoption of the constitution and who was otherwise qualified, was deemed a qualified elector. The elections were to be conducted according to the existing laws of the Territory.

Finally, the schedule provided that the governor might use his private seal until a State seal was provided.

In a study of the origin and in an analysis of the content of the Missouri constitution of 1820 two points stand out clearly: first, this constitution was fundamental as compared with the majority of later state instruments in setting forth in brief terms the organization and functions of the State government; second, its general provisions differed in relatively few respects from those to be found in some of the then existing state constitutions.

In the framing of some parts it is apparent that one or two state constitutions were largely the patterns followed; as regards other parts it appears that they were selected from first one and then another state's organic law. Naturally the very character of the inhabitants of Missouri predisposed them to follow the southern type of constitutions, especially those of

Kentucky and Alabama in preference to those of the north, but this did not seemingly in the least hinder the convention from favoring and choosing a section from the constitutions of Maine, Delaware, Connecticut or Pennsylvania, or from Ohio and Indiana, and throughout the entire document is seen the great influence exerted by the constitution of Illinois. In fact it appears that with the exception of Kentucky, the latest framed state constitutions, *e. g.*, Alabama, Illinois, Maine, etc., were more influential than the others. Further it appears that the framers of this constitution strove conscientiously to adopt those provisions, from whatever source they came, that in their view were the best fitted for guiding Missouri in her future development. Two compromises on important subjects were included in this document and each was made in a similar manner. The selection of a permanent seat of government was shifted to the general assembly and the choosing of either the *viva voce* or the ballot system of voting was also shifted to the shoulders of that body. On the whole, it speaks well for the convention that its work stood the test of nearly half a century and then was displaced by an instrument whose adoption was based on reasons other than merit, however great the latter was in itself.

The specific provisions of the Missouri constitution of 1820 differed in some respects from those in other constitutions. These differences, or departures from established rules, were on the whole distinct advances. Some were merely novelties, but most were important and in practice worked well. The latter is proved by the incorporation of a majority of these specific provisions in the present constitution of Missouri.

The preamble of the 1820 constitution contained a phrase that appeared in no other state constitution of that day. This phrase was that the people of Missouri did mutually agree to form and establish "a free and independent republic." There is, however, no reason to attach special significance to the word *republic*. It was merely a novelty that carried no import except to the Fourth of July orator seeking political favors.

A number of provisions, applying to the legislature, was inserted that were followed by few of the twenty-three states.

A two year term for state representatives obtained in only four states. An age qualification of twenty-four years for representatives was present in only two states. In only two states was an age qualification of thirty years provided for state senators. Biennial state elections were provided for in only four states. A corrupt practices act of equal worth obtained in only two states. A provision empowering the general assembly to punish by "fine or imprisonment" those, not members, for contempt of authority of the legislature, obtained in no other state constitution. No other state constitution gave so much protection to the rights of the slave as did this one, although no other state made it mandatory on the legislature to prohibit free negroes from coming into the state. Only five other state constitutions directed the legislature to make laws regulating the manner whereby suits might be brought against the state. In only two other state constitutions were biennial sessions of the legislature provided for, the others having annual sessions. Finally, only one other state constitution provided for a revision of the state's laws at regular intervals of time.

The noteworthy provisions apply to the executive department were, with one or two exceptions, distinct inprovements over the other state constitutions of that day. Only two states required the governor to be at least thirty-five years old and only three states made his citizenship qualification so high. In only three states was the term of the governor as long as in Missouri, *i. e.*, four years. With the single exception of Kentucky, Missouri was alone at this time in allowing the governor by constitutional provision ten days in which to pass on bills, the other states either placed a shorter time limit or made no mention of this. An officer called the "Auditor" was provided for in only three constitutions and in no state was his term four years or his tenure appointive by the governor and senate—being usually left to the legislature. In no state constitution was there so liberal a provision for the salary of the governor, no state set forth the minimum amount he should receive and one state had a maximum amount that was less than two-fifths of Missouri's minimum. Only two states provided for a four

year term for the lieutenant governor and only one of these required him to be at least thirty-five years old. No other state constitution went as far as Missouri's in providing for the succession in case of temporary vacancy in the office of governor and only two states had such a detailed provision on the election of a governor to fill the vacancy occurring during the unexpired term of the regular incumbent.

In the framing of the provisions on the judiciary, the constitution followed more closely the provisions in other constitutions than was the case in either the legislative or executive departments. This was natural. Of the three departments of government, the judiciary of the states was the last to succumb to the leveling spirit of democracy. The peculiar conservatism that has for centuries attached itself in English speaking countries to the law interpreting department of the State, the general high regard in which it has been held, and the sanctity of stability which has surrounded both bench and bar and which has enabled them to follow precedent and custom instead of being subject to changes, are all easily perceived by any one who has traced in even an elementary manner the institutional growth of English and American history. The Missouri constitution of 1820 was no exception to the spirit of the times in this respect.

Several departures were, however, made in the Missouri judiciary department. Only one other state constitution provided for a minimum salary for the judges of the higher courts. One state constitution did, however, mention what the salary should be. No other state constitution provided for a minimum age qualification for the judge and only five states had a maximum age qualification.

The provisions in the Missouri constitution relating to a state bank were exceptionally conservative.

It is also worthy of mention that only one state constitution at that time provided an easier method of amendment, *i. e.*, where an amending clause could be found.

The last article in the Missouri constitution of 1820, article XIII on the "Declaration of Rights," was so uniformly similar to corresponding articles in many other state consti-

tutions that it presents no special points of variation of either novelty or importance. The same general spirit permeated the bills of rights of the various constitutions and the Missouri constitution was no exception.

CHAPTER IX.

A *DE FACTO* STATE.

Missouri became a state on Wednesday, July 19, 1820. On that day was adopted the first state constitution of Missouri.[1] This constitution immediately superseded in sovereign authority the former organic laws of Missouri, *i. e.*, the acts of Congress. Although provisions were made for the territorial laws and officers remaining in force and in office until the former were abrogated, amended or superseded by later state laws, and until the latter were displaced with state officers, such territorial laws and officers derived their legal power from the express sanction of the constitution and not from the territorial forms of government of 1812 and 1816.[2] Even on the day the constitution was adopted, the president of the convention, acting under the authority vested in him by the constitution, exercised a power of the highest character, that by the territorial laws was expressly vested in the governor. This power was the issuing of writs of election to the sheriffs of the various counties to hold a special election.[3] Not only were the writs of the first state election issued by David Barton on July 19, 1820, but they were issued under the authority of "the State of Missouri." The following is a copy of one of these writs taken from the *Jackson* (Mo.) *Herald* of July 22, 1820:

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[1] This constitution was never submitted to a popular vote. The Missouri Enabling Act was silent on the point and the Missouri convention of 1820 made no provision for having the constitution submitted to the people. The preamble of the constitution stated that on Monday, June 12, 1820, the delegates in the convention did "mutually agree to form and establish a free and independent republic, by the name of 'THE STATE OF MISSOURI,' " and for the government thereof they did "ordain and establish this constitution." That the convention had authority to form a constitution and state government is obvious from section four of the Enabling Act.

[2] *Missouri Constitution, Schedule*, sec. 1-5.

[3] *Mo. Ter. Laws*, sec. 15, 20, 22, of act of Jan. 4, 1814, (pp. 299ff). *Cf.*, also sec. 7 of Act of Cong. June 4, 1812. (U. S. Stat. at Large, II. 745ff.) *Mo. Const. Schedule*, Sec. 9.

The State of Missouri

To the Sheriff of the County of Cape Girardeau or in case of vacancy, to the Coroner of said County, Greeting:

You are hereby required, that you cause an Election to be held, in the manner prescribed by law, at the several places of holding Elections within your county, on the *fourth Monday of August next*, for one Governor, one Lieutenant-Governor of this state; a Representative in the Congress of the United States for the residue of the sixteenth Congress, a Representative for the seventeenth Congress; two Senators for the district composed of your said county and the county of New Madrid, and four Representatives from said county to the General Assembly; one Sheriff and one Coroner for your county—Herein fail not.

WITNESS, David Barton, President of the Convention at St. Louis, the 19th day of July, 1820, and of American Independence the 45th.

DAVID BARTON.

The regular territorial election of 1820 should have taken place on the first Monday in August: this election was never held because the territorial laws had been abrogated by the Missouri constitution on this point. Several other examples might be cited to show that beginning July 19, 1820, Missouri was a *de facto* state but it does not seem necessary here.[4]

At least a month before Missouri had adopted a constitution and become a state, and more than two months before the first state election, the "wire-pulling" of candidates for both elective and appointive officers had begun. The convention had barely settled down to the work of framing an organic law for Missouri when it was more or less torn by the political aspirations of those in and out of that body. It is impossible to say how much this struggle for office holding affected the framing of the constitution; it is not improbable, however, that its influence was great. Some sections of that document, *e. g.*, the high salary clauses, were probably the result of the work of those who expected to benefit by those sections. The opportunities for "logrolling" were too many not to have been taken advantage of by the leaders. The "caucus" was as prominent as in the hey-day of later years and as fully commented on by the opposition. The secrecy that veiled the work of the convention, the almost criminally unsatisfactory character of the *Journal* on debates and votes, and the tardiness

[4] *Cf. Mo. Ter. Laws*, sec. 1, 11, of Jan. 4, 1814 (pp. 297f), regarding time of election, officers to be elected, and qualifications of electors. Also act of Congress of June 4, 1812, sec. 6. (*U. S. Stat. at Large*, II. 745.) A proclamation of Frederick Bates, as acting governor of Missouri Territory, dated July 20, 1820, does not disprove the position taken here. The proclamation referred to offered reward for the arrest of a certain criminal. (*St. Charles Mo.*, Aug. 12, 1820.)

in the distribution of that document, were all calculated to and partially succeeded in keeping the people uninformed on what some of their representatives had done. This much is certain that the plans and counter-plans in the convention that stretched from the future occupants of the Bench of Missouri and of the State Executive Department to the Halls of Congress, were as vigorously fought for as were those schemes over the location of the temporary and permanent seats of government of the new State. This political campaigning was confined in the convention to a minority of the delegates but this minority included the leaders of that body. It is not improbable that these leaders were forced to compromise on issues in order to forward their ambitions and although the constitution suffered in some of these compromises it may also have gained in others.

The early campaigning, which was in full sway by June and which probably had its inception in May, was over the state offices of governor, supreme court judges, and the two United States senators to be chosen from Missouri. Although only one of these, the governor, was elective by popular vote, the tenure of the other five rested on the will of the governor and the members of the general assembly. The importance of the governor was further increased by his power of appointment of the chancellor and of all the members of the executive department except the treasurer, which, like United States senators, was exclusively under the control of the legislature. The office of representative in Congress was not subject to dispute as it was the desire of a majority of the inhabitants to see John Scott, the last territorial delegate from Missouri, returned to Washington. No one openly opposed his re-election and no other name was on the ballot for this office. The office of lieutenant-governor was not sought after in the early part of the campaign. Towards the close, however, several candidates appeared.

The ability and public record of William Clark, the territorial governor of Missouri, and the many friends attached to him, furnished a strong recommendation for his candidacy for the office of chief executive of the new State. The lingering illness of his wife, however, who at that time was in Virginia,

acted as a check on whatever political ambitions were entertained by Clark.[5] He refused at first to have his name considered and his secretary, Frederick Bates, was urged for the place. It is not clear who first brought Bates out but it is not improbable that one of his endorsers was Charless, editor of the *Missouri Gazette*.[6] Bates had enjoyed public office in Missouri Territory and in the Territory of Louisiana for over a decade. His appointment to the secretaryship of these two territories and the satisfactory manner in which he had discharged the duties of his office, frequently being also the acting territorial governor, made him well qualified to hold the office of governor of Missouri. Bates was probably induced to become a candidate both by some of the supporters and by some of the enemies of Clark as well as by his own personal friends. Up to this time political conditions were unsettled. The informal announcement of Bates and his endorsement by Charless gave impulse to the wire-pulling of the politicians.

Alexander McNair was brought forward as a candidate for governor. McNair probably announced his own candidacy. He was at once taken up and endorsed by those members of the St. Louis caucus who looked upon him as being less distasteful than Bates. These politicians probably regarded McNair as being simply the lesser of two evils. They also thought he could be worked to do their bidding and they began sending out letters endorsing his candidacy. On finding McNair independent of their wishes and requests, they at once switched their support to Clark and countermanded their McNair letters.[7]

The public and military record of McNair in Missouri Territory, combined with his model and hospitable private life, made him good, political timber. He had many friends and few personal enemies. Besides possessing a popular record in his administration of the United States Land Office at St. Louis, McNair was a "mixer." He was more popular than

[5] Mrs. Julia Clark, wife of Gov. Clark, died at Fotheringay, Va., on June 27, (*Mo. Intell.*, Sept. 2, 1820.)

[6] See article by "Fair Play" in *Mo. Gaz.*, Aug. 23, 1820.

[7] Article by "Fair Play" in *Mo. Gaz.*, Aug. 23, 1820.

Clark and his campaign in July and August showed his ability to discern and to present those political issues that advanced his cause.

The announcement of McNair as a candidate was followed closely by that of Clark. It appears that the personal persuasion of friends and of the St. Louis politicians induced Clark to give his consent to run. Bates, whose candidacy had been more rumored than settled, withdrew from the race. The final entrance of Clark and McNair as rival candidates for the governorship gave a definite tone to the campaign that changed little up to the day of the election.[8] The support of Charless and of the *Gazette* followers swung to McNair; the machine politicians supported Clark.

Clark was the choice of the leaders of the convention. The prominent politicians and lawyers of St. Louis were for him. These combined with his political friends throughout the Territory made his position a strong one. The well known St. Louis *lawyer junto* of the spring of 1820 became the caucus of the summer of that year. Joseph Charless, editor of the *Missouri Gazette*, waged war against the latter, especially against his rival, Benton—editor of the *St. Louis Enquirer*—, with his characteristic, fiery articles. Benton played safe in combating Charless and in pulling the wires for his own advancement. During June the *caucus* met several times. A slate was finally made with Clark at its head; Benton and Jones were put down for United States senators; Barton—probably David—, Harper and Cook—probably John D.—, for Supreme Court judges. A majority of the members of the convention had nothing to do with these plans but all were aware of what was being done. Finally even in the debates of the convention, principles and issues on the constitution were dropped, "in order to indulge in invidious reflections on motives, such as *personal views, intrigue, office hunting, carving and dividing the loaves and fishes*, etc., together with exculpatory answers of antagonists." [9]

[8] Letter of L. Jno. O'Fallon, St. Louis, June 24, 1820, to Gen. T. A. Smith. (*Smith Mss.*)

[9] *Mo. Gazette*, editorial, June 28, July 12, 1820.

Although the slate of the caucus did not go through as originally planned, it speaks well for the political ability of that body that every candidate on it except Clark was elected or appointed to an important state office. Benton and Barton reached the United States Senate; Harper was appointed State Chancellor; and Jones and Cook were appointed two of the first three Supreme Court Judges of Missouri. It appears that the first slate was later changed and some of the names dropped. Clark and Benton were, however, the conspicuous names that remained before the public and, although the *Gazette* was friendly towards several of the candidates selected by the caucus, Charless never ceased to oppose the candidacy of Clark and Benton.[10]

Charless was also opposed to the methods as well as to the lawyer-composition of the caucus. He wrote in part as follows: "It was a junto or caucus we alluded to who availed themselves of the opportunity which the meeting of the Convention afforded to effect their selfish designs. We appeal to almost every member of the Convention whether he was not personally tried to be prevailed to pledge himself to the support of at least two of the candidates named, viz.: Governor Clark and Colonel Benton . . . . . Governor Clark and Colonel Benton were two candidates fixed and determined upon. If the story enrages the noble minded Missourian, against some of the men named, it will effect a desirable object . . . . . But every friend of the state will oppose the men who arranged and plotted the scheme, and the public well know who are the authors of it . . . . [Dare they deny] that a certain set of men met several times in St. Louis, during the meeting of the Convention, whose whole object was the determination how to dispose of the *loaves* and *fishes* in the future state of Missouri. Dare they deny that some of the friends of Governor Clark wrote in favor of Colonel McNair, at a time when it was understood that Governor Clark would not run. Dare they deny, that these letters were afterwards countermanded. And dare they deny that all this was done by direction of the caucus or junto,

[10] *Mo. Gaz.*, Aug. 9, 1820, *editorial.*

or whatever else the quibbling editor [Benton] may please to call the meeting." [11]

Of all the leaders of the caucus and of all the candidates favored by it, none was so bitterly attacked as Benton. In an editorial which appeared in the *Gazette* on July 12, 1820, the future statesman of Missouri was thus described:

"A man crimsoned with the blood of one of our most promising young citizens, under circumstances of cold and deliberate calculation, whose only fault was to be in the way of his ambitious designs—whose character and reputation was spotless, and operated as a reproach to that of his ferocious enemy. We say that such a blood-thirsty man is much worse than 'a *Panther*.' " [12]

The *St. Louis Enquirer* was kept busy trying to explain and side-step the charges of the *Gazette*. It seems to have failed in defending its cause and in order to divert public opinion made the contemptible charge that the slavery-restrictionists were being headed by McNair. Early in the campaign the *Enquirer*, in answer to an article that had appeared in the *Gazette*, tried to connect the restrictionists and the McNair supporters—especially Charless. The falseness of this statement is shown by the fact that of the nineteen candidates for election to the General Assembly in St. Louis county, only two were in favor of restriction and one of these was a Clark man. The single restrictionist candidate in St. Charles county was a Clark man. No restrictionist candidates were up at all in Jefferson and Washington Counties.[13]

The *Gazette-Enquirer* controversies revealed the machine methods of the campaign: the public campaign waged by the candidates and their friends was described principally in private letters, public letters, and newspaper articles that appeared over anonymous names. While the machine campaign held the attention of St. Louis and the vicinity, the public campaign was given greater prominence in the county press. The echoes of the bitter Charless-Benton struggle waged in St. Louis hardly reached the ears of the voters in the Boone's Lick county; the latter were interested in the public campaign conducted by

[11] *Ibid.*

[12] Charless here referred to the Benton-Lucas duel, in which Benton murdered the son of the eminent jurist, Judge John B. C. Lucas.

[13] *Mo. Gaz.*, Aug. 23, 1820, article by "Fair Play;" *cf.*, *ibid.*, July 12, 1820; *Enquirer*, Aug. 12, 1820.

the friends and opponents of Clark and McNair and in the personal electioneering of McNair.

The absence of Clark from Missouri during the campaign may have hurt his cause but it is equally probable that it gave him many votes through the sympathy of those who knew of the severe illness of Mrs. Clark. Further, Clark's candidacy was ably conducted by his friends and especially by the St. Louis lawyers and by other aspirants for political honors scattered over the State.

Following closely on giving his consent to run, Clark wrote a public letter "To the People of Missouri." [15] This letter was modest in tone and reserved in language. It contained no mention of his opponent and merely set forth in concise language Clark's biography. In it Clark stated that his early life had been spent in Kentucky; that he had come to Louisiana in the fall of 1803; had lived in Missouri seventeen years; and had been its governor seven years. He added with pride that he had received commissions from four Presidents—Washington, Jefferson, Madison and Monroe. After stating that he would be away from Missouri till after the election, Clark concluded: "I cannot flatter myself that I am worthy to occupy the first office among you; but if called to it by your voice, I shall bring with me a fervent wish to contribute to your prosperity, and to maintain the honor of a State whose name must forever be dear to me."

The friends of Clark urged his case before the people in newspaper articles. The military and civil record of Clark, his negotiations with the Indians, and his joint-leadership of the even then famous Lewis and Clark Expedition, were his strongest assets in public esteem.[16] His part in extinguishing Indian titles in Missouri was also strongly emphasized and struck a responsive chord in the hearts of the frontiersmen.[17] Clark's gentlemanly qualities and his knowledge of government were also urged and one writer with modern political astuteness called him the "poor man's friend." [18]

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[15] This letter was dated St. Louis, July 2, 1820. (*Mo. Intell.* Aug. 26, 1820.)
[16] *Mo. Intell.* Aug. 12, 1820, article by "An Observer."
[17] *Mo. Intell.* Aug. 26, 1820, article copied from the *Enquirer*.
[18] *Ibid.*, article by "G."

The opposition to Clark made few charges against him. Clark's private life was exemplary. His present troubles secured for him the sympathy of even his enemies. His public record had been a long and honorable one. The only criticism urged against it by his enemies was Clark's laxness in protecting the frontier against the Indians.[19] The most damaging argument against Clark was his affiliation with the lawyer caucus at St. Louis. It was sarcastically said by one that the delegates from the convention had returned home friends of Clark and had since always spoken of him as a "great, good and wise man." [20] Since at this time many of the delegates had fallen into public disfavor on account of the high salary clauses in the constitution, their advocacy of Clark only served to fasten suspicion on both them and their candidate. In short in Clark's strength lay his weakness. His supporters and especially his campaign managers had displeased all by their caucus methods. It seemed to the voters that a ring had determined to dictate to the people, and the people in turn resolved to rebel against such plans. They turned to McNair, who was opposed by the caucus and who had voted against high salaries.

McNair began his campaign early. It is probable that his obvious inactivity in the convention and the inconspicuous part he played in the framing of the constitution were due to his political ambitions for the governorship. McNair waged a personal campaign from the beginning. He not only appealed to individuals but he made a popular appeal to the people. His methods were democratic, savoring a little of the demagogue, but did not degenerate to personal abuse of his antagonist. He "stumped" the state and outside of St. Louis did or said nothing to incur either bitter hostility or contempt. The first recorded public utterance of McNair was made in June. He is reported to have said that he calculated on a majority of five hundred in St. Louis county, which would consist of "*the honest farmers*" who were able to appreciate his merits.[21] This well planned

[19] *Mo. Intell.* Aug. 5, 26, 1820, an article by "A Citizen."

[20] *Ibid.*, Aug. 19, 1820, an article by "Shelby."

[21] Letter of L. Jno. O'Fallon, dated St. Louis, July 24, 1820, to Gen. T. A. Smith. (*Smith Mss.*) O'Fallon favored Clark.

vote-getter statement was followed by a brief, modest public letter to the people of the State asking for their support. In a postscript attached to this letter as published in the *Missouri Intelligencer* of August 26, McNair stated that he regretted that the *Journals* of the convention had not been distributed, implying the culpability of the leaders of the convention, so that the people could see how he and other delegates had voted. He added that he had and still opposed the high salaries of the governor and judges and would recommend to the legislature their alteration.[22] One of the chief political assets of McNair was his stand against these high salaries. It was a popular stand and was reinforced by the fact that he had voted against incorporating such provisions in the constitution. His record as Register of the St. Louis Land Office was also a recommendation for him. While holding that position he had deliberately disregarded the unpopular instructions of his superior and had granted more than a quarter section of land to individuals. This action had been opposed by the land speculators but had met with the approbation of the pioneer settlers. Further, the fact that McNair's interpretation of the law on this point was found to be correct and the orders of his superior were later changed, served to strengthen his cause.[23] The friends of McNair made prominent his military record and also dwelt on his private life. One writer said that he was "an exemplary father and husband, and a warm friend." [24] His hospitality, his private virtues and public services, were spoken of in the highest terms and little refutation was attempted in public by the opposition.[25]

A letter was written from St. Louis late in the campaign accusing McNair of being an emancipator but this charge was publicly denied by McNair's friends.[26] More serious and better founded charges did appear, however, that were not denied. He was justly accused of having officially done nothing in the

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[22] The letter was dated St. Louis, July 21, 1820, and the postscript Franklin, Aug. 21, 1820.

[23] *Mo. Intell.*, Aug. 19, 1820, article by "Shelby."

[24] *Ibid.*

[25] *Mo. Intell.*, Aug. 5, 1820, article by "A Citizen."

[26] *Ibid.*, Aug. 26, 1820, article by "A Citizen."

convention except vote; that no part of the constitution owed any of its excellence to him; that while the names of Barton, Bates and Cook were familiar ones in the convention, the name of McNair meant nothing; that his political aspirations and his ignorance combined were the reasons of his inactivity in the convention; that although he was a good citizen, a model husband, parent and neighbor, he lacked capacity and independence to hold the office of governor; and that he could not be compared with Clark in knowing law.[27] That McNair's methods were not dissimilar from those later employed by some politicians and that he was also not free from the strings of financial embarrassment, are revealed in the following extract from a private letter written by the well known St. Louisan, L. Jno. O'Fallon:

"The election is getting very warm—McNair is making the greatest exertions in the tippling shops of this place—he can, at any time, now, be found in the back street, among the dirtiest black guards—asserting, that he *must*, and *will*, be elected —he is much involved in de.. [torn out] ing been protested in bank four times, [*torn out*] to secure the votes and support of his creditors, assures them that his election will tend much to extricate him from his embarassments—." [28]

It is quite probable that at least one of the reasons for McNair later appointing some of the machine politicians to office was due to the pressure of these very creditors.

The campaign of John Scott for representative in Congress was confined to a public address, printed in the newspapers of the State. In this address Scott urged his past record, his experience in Congress—which, he said, would be an aid in securing final admission—, and his success in getting land grants for Missouri as a State. He concluded by defending his position in regard to the apportionment of delegates.[29] As Scott had no opponent, no attack was made on his candidacy.

The campaign for the office of lieutenant governor, although not so actively conducted as was that for governor, engaged the attention of more candidates, there being four that presented their names to the people. The first of these to announce his position was General Jonathan Ramsay, a delegate to the convention from Montgomery county.[30] The

[27] *Mo. Intell.*, Aug. 12, 26, 1820, articles by "An Observer."
[28] Letter dated St. Louis, July 27, 1820, to Gen. T. A. Smith. *Smith Mss.*
[29] *Mo. Intell.*, Aug. 12, 1820.
[30] *Mo. Intell.*, Aug. 5, 1820.

record made by Ramsay in the convention was a good one. He was also an honest and able business man and farmer. His military career in Kentucky was a long and honorable one. Nothing could be urged against his private life. He lacked, however, the necessary state-residence qualification of four years for the office of lieutenant governor and publicly withdrew from the race.[31] Another candidate was the wealthy St. Louis business man and financier, General Wm. H. Ashley. Ashley's name had not then become associated with the fur trade, in which he rose to such prominence, but he was already one of the most influential men in the State. He had successfully engaged in manufacturing gunpowder at Potosi, was a wealthy land owner, a big real estate dealer, and was interested in the old Bank of St. Louis. His military record in Missouri was an asset as well as were his long established residence here and the influence of his wife's relatives in southeast Missouri.[32] The principal opponent of Ashley was Nathaniel Cook, a delegate to the convention from Madison county. The two Cooks, John D. and Nathaniel, were prominent political characters in southeast Missouri. Both were popular and widely known. They were, however, in accord with the St. Louis caucus and this probably detracted much from the influence exerted by Nathaniel Cook in this campaign.[33] The fourth candidate was Henry Elliott of Ste. Genevieve. His part in the campaign was not a conspicuous one.[34]

The campaign for the election of state legislators and of county sheriffs and coroners was noteworthy in the number of candidates. In Howard county alone there were at least thirty-nine candidates[35] and in St. Louis county there were nineteen for the general assembly alone.[36] Sentiment was strong against electing delegates to the legislature and this sentiment was given expression at the polls in sending only seven of the forty-one constitution framers to the first general

[31] *Mo. Intell.*, Aug. 19, 1820.
[32] *Mo. Intell.*, Aug. 12, 1820; Houck, *Hist. of Mo.*, III. 256f.
[33] *Mo. Intell.*, Aug. 26, 1820.
[34] *Mo. Intell.*, Aug. 19, 1820.
[35] *Mo. Intell.*, Sept. 2, 1820.
[36] *Mo. Gaz.*, Aug. 23, 1820.

assembly of Missouri, a body with a total membership of fifty-seven. Besides the general reasons already advanced for this feeling of opposition, especially those regarding the high salaries and the caucus, were these: that rotation of office holding should be favored; that the *Journal* had not been printed; and that many delegates had absented themselves on important votes.[38] One writer with asperity urged the voters not to send to the first State legislature of Missouri as they had to the last territorial general assembly "a set of ignoramuses, hardly capable of reading, much less comprehending the English language, and woefully deficient in every qualification necessary to constitute a legislator." [39]

The campaign closed on Saturday, August 26, and the first State election, in accordance with the provisions of the schedule of the constitution, was held on the following Monday. "The day was unusually fine," wrote the editor of the *Missouri Intelligencer*, "and the polls well attended," there being over two thousand votes cast in Howard county alone. He added that despite the many candidates and the conflicting interests at stake "the election was conducted with the greatest order and decorum, and reflects the highest credit on the citizens." [40] None of the newspapers of the State contained accounts to the contrary regarding the orderliness of the election. The voting was by ballot.[41] Interest centered in the governorship, there being nine thousand one hundred and thirty-two votes cast for governor, eight thousand and fifty for lieutenant governor, and only five thousand three hundred and eighty for representative. So far as the returns are available today, McNair run ahead of Clark in most if not all parts of the State by large majorities. Even in St. Louis county, the headquarters of the ring, McNair polled twice the votes that Clark did, receiving eight hundred and fifty-nine to his opponent's four hundred and thirty-one.[42] In St. Charles county Clark was

[38] *Mo. Intell.*, Aug. 12, 1820, article by "An Elector."
[39] *Mo. Intell.*, Aug. 26, 1820, article by "Howard."
[40] *Mo. Intell.*, Sept. 2, 1820.
[41] *St. Charles Missourian*, July 22, 1820.
[42] *Mo. Intell.*, Sept. 9, 1820.

beaten nearly three to one; in Cooper county, four to one; in Howard and Jefferson counties, nearly two to one; and in Pike county, McNair and Cook received a majority.[43] The official abstract of the returns as examined by the general assembly showed that McNair had been elected by a majority of four thousand and twenty votes, receiving six thousand five hundred and seventy-six, and Clark, two thousand five hundred and fifty-six.[44] Over half the State vote was cast in the counties of Howard, Cooper, St. Charles, and St. Louis. In these four counties McNair and Clark each received more than half of their total support.

The election returns on the lieutenant governor were close. The withdrawal of Ramsay from the race and the unpopularity or inconspicuousness of Elliott, left the contest between Ashley and Cook. The few county returns available show that it was no man's victory until all the districts had been heard from. In Howard county Ashley ran ahead of Cook by two hundred and seventy-six votes, receiving one thousand and thirty-eight to his opponent's seven hundred and sixty-two; in the adjoining frontier county of Cooper, Ashley received only two hundred and ninety-five votes against the five hundred and seventy-three votes cast for Cook; in St. Charles county Ashley polled three hundred and fifty-five votes, Cook two hundred and thirty-nine; while in St. Louis county, the residence of Ashley, he received only three hundred and thirty-eight while Cook received eight hundred and eight.[45] The abstract of the returns examined by the general assembly gave Ashley three thousand nine hundred and seven votes, Cook three thousand two hundred and twelve, and Elliott nine hundred and thirty-one.[46] In the four counties of Cooper, Howard, St. Charles and St. Louis, Ashley received fifty-one per cent. of his support and Cook seventy-four per cent. This seems to show that

[43] *Ibid.*, Sept. 9, 16, 1820.

[44] *Ibid.*, Sept. 30, 1820. The *St. Louis Enquirer*, Sept. 19, 1820, stated that McNair received a majority of three thousand nine hundred and twenty-three votes over Clark. The journal of the House as copied in the *St. Louis Enquirer*, Sept. 23, 1820, gave Clark two thousand six hundred and fifty-two votes.

[45] *Mo. Intell.*, Sept. 9, 1820.

[46] *Ibid.*, Sept. 16, 1820; *St. Louis Enquirer*, Sept. 19, 1820.

Cook, the southeast Missouri candidate, was better supported in St. Louis and the northern counties than Ashley.[47]

The members elected to the house of Representatives of the general assembly were: from Howard county, Andrew S. McGirk, Elias Elston, Daniel Monroe, Tyre Harris, James Alcorn, John Ray, Martin Palmer, Samuel Williams; from Cooper county, William Lillard, Thomas Rogers, William McFarland, Thomas Smiley; from Montgomery county, Jesse B. Boone, Bethel Allen; from Pike county, James Johnson, Daniel Ralls; from St. Charles county, Joseph Evans, Uriah J. Devore, William Smith; from St. Louis county, Joshua Barton, David Musick, Henry Walton, John S. Ball, Alexander Stewart, Marie P. Leduc; from Franklin county, Philip Boulware, ————; from Lincoln county, Morgan Wright; from Jefferson county, William Bates; from Washington county, George Hudspeth, Robert M. Stevenson; from Ste. Genevieve county, James Caldwell, Joab Waters, Daniel [or David] Murphy, James H. Relfe; from Cape Girardeau county, Joseph McFerron, Edmund Rutter, Thomas W. Graves, Robert English; from New Madrid county, John Hall, Richard H. Waters; from Madison county, Samuel D. Strother, and from Wayne county, Ezekiel Rubottom.[48] Of these forty-three representatives elected to the first general assembly of the State of Missouri, one, the unknown representative from Franklin county, died before taking his seat in that body; two, Ray and Ralls, died while the legislature was in session in 1820; one, Boone, died just after the close of the session; and two, Barton and McFerron, resigned before the end of the first session.[49] John G. Heath, a former delegate to the convention, was elected to fill the term of the unknown Franklin county representative; Duff Green, another delegate, was elected to take Ray's seat; no one seems to have been elected

[47] Pike county also went for Cook. *Mo. Intell.*, Sept. 16, 1820.

[48] *Mo. Intell.*, Sept. 30, Oct. 14, 1820.

[49] Regarding the unknown Franklin county representative see *Mo. Senate Journal*, 1820, p. 60. Ray died in St. Louis on Oct. 13, 1820. (*Ibid.*, p. 51.) Ralls died in St. Louis on or about Oct. 30 or 31, 1820. His funeral was held on Oct. 31. (*Ibid.*, pp. 82f.) Boone died in St. Louis on Dec. 22, 1820. (*Mo. Intell.*, Jan. 1, 1821.) Barton resigned on Sept. 21, 1820. (*Mo. Intell.*, Oct. 14, 1820; *St. Louis Enquirer*, Sept. 30, 1820.) McFerron resigned in Nov. 1820. (*Mo. Intell.*, Dec. 9, 1820.)

at this session to fill the place of Ralls; Henry S. Geyer was elected to Barton's seat; and William (?) Dougherty was probably the man elected to take McFerron's place.[50] The resignation of Barton was caused by his seeking the office of secretary of state; that of McFerron, by his being appointed to a circuit clerkship.

The fourteen members of the senate elected at this election were: from Howard and Cooper counties, Benjamin Cooper, Bennett Clark, Richard W. Cummins, Elias Barcroft; from Montgomery and Franklin, James Talbott; from St. Charles, Benjamin Emmons; from St. Louis, Silas Bent, Mathias McGirk; from Jefferson and Washington, Samuel Perry; from Ste. Genevieve, Isidore Moore; from Madison and Wayne, David Logan; from Cape Girardeau and New Madrid, George F. Bollinger, Abraham Byrd; and from Lincoln and Pike, Samuel K. Caldwell.[51] McGirk later resigned to accept a Supreme Court judgeship.[52] Of these fourteen senators three, or twenty-one per cent., had been delegates to the convention; of the forty-three representatives only five, including Heath, or eleven per cent., had been delegates.

The ablest members of the lower house were Joshua Barton and his successor, Henry S. Geyer; those in the senate were Benjamin Emmons, Silas Bent, Mathias McGirk and Samuel Perry. The character of the membership of both chambers did not begin to equal that of the convention. Many were men of little or no political experience and never rose to prominence. The leaders and the best minds of Missouri were in the convention, and the first general assembly was not a pro-convention body. The people had, with few exceptions, passed by their politicians and sent untrained men to legislate for them. The leaders waited and as popular indignation over high salaries and other measures subsided, they gradually came back. Thus while only seven delegates were in the beginning elected to the first general assembly, two more, Heath and Green, were added to the number by the close of the last session;

[50] *Mo. Senate Journal*, p. 60; *Mo. Intell.*, Nov. 4, Dec. 9, 1820.
[51] *Mo. Intell.*, Sept. 30, 1820.
[52] *Mo. Senate Journal*, 1820, p. 141.

and in the second general assembly, eleven delegates were seated.[53]

The first general assembly of the State of Missouri, in accordance with the constitution, convened in St. Louis on the third Monday in September, the 18th, 1820. The place of meeting for this session was the Missouri Hotel,—a fine, three-story, stone building, erected by Thomas Brady in 1819 and opened by David Massey in 1820. Walter B. Stevens, the St. Louis historian, thus describes this structure: "One of the most notable landmarks of the town of St. Louis disappeared in 1873, when the old Missouri hotel was razed, to give place to a business structure. In its day this was the finest hotel in the West. It was commenced in 1817 and was completed two years later. When the property passed into the hands of Major Biddle an addition was built to increase the accommodations. The Major went east and procured a professional hotel-keeper, who opened the house with an equipment and appointments which made it the hotel of the Missouri Valley." [54]

The two chambers met separately and the members present having produced their credentials, were sworn and proceeded to organize. The house elected James Caldwell, speaker; John McArthur, clerk; and George W. Ferguson, door-keeper.[55] All these offices were contested. The election of Caldwell, of Ste. Genevieve, over Stewart, of St. Louis, showed the strength of the southeast Missouri forces. Later in the session John Rice Jones was appointed clerk *pro tempore* of the house in the absence of McArthur, and on November 8th, Jones was elected chief clerk of the house.[56] The senate unanimously elected Silas Bent president *pro tempore;* John S. Brickey, clerk *pro tempore*; and Jabez Warner, doorkeeper. Brickey after two *viva voce* votes was then elected clerk[57] and later in the session Thompson Douglass was elected assistant clerk.[58] The election

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[53] *Off. Manual of Mo.*, 1914-15, p. 150.

[54] Stevens, *St. Louis*, p. 119; Billon, *Annals*, 1804-1821, p. 106, a picture of the hotel is opposite p. 106. The hotel was located on the southwest corner of Main and Oak Streets, now North Main and North H. Streets.

[55] *St. Louis Enquirer*, Sept. 23, 1820; *Mo. Intell.*, Sept. 30, 1820.

[56] *Senate Journal*, 1820, pp. 43*f*., 81, 101.

[57] *Ibid.*

[58] *Senate Journal*, 1820, p. 41.

of Bent, of St. Louis, showed the strength of the St. Louis and northern county senators and this strength was never seriously threatened during the session. At 4 P. M. the senate and house assembled in the chamber of the latter and agreeable to the constitution made an official count of the votes for governor and lieutenant governor. A committee of three from each house was appointed to inform McNair and Ashley of their election and to request their presence before the general assembly to be qualified. At 11 A. M., on September 19, Governor McNair and Lieutenant Governor Ashley appeared before the joint session of the general assembly and in their presence took the oaths of office. At 4 o'clock of the same day, Governor McNair delivered in person his first message.[59] This first message of the first governor of the State of Missouri was, unlike the majority of its successors, brief. It contained only one specific recommendation regarding legislation—the advisability of making provision for the appointing of presidential electors from Missouri. Nine days after this first message Governor McNair issued a proclamation declaring the election of John Scott as representative to Congress from Missouri.[60]

The first days of the session were spent in preliminary work. Committees, standing and special, were appointed, of which the most important were on claims, grievances, constitutional provisions, permanent and temporary seats of government, militia, vice and immorality, census, slaves, roads and bridges, and the great seal of the State.[61] In spirit with the governor's message, a resolution was offered on the third day in the house that stated it was inexpedient at that session to legislate further than was necessary for organizing the government and appointing officers. This resolution was tabled.[62] From almost the beginning of the session several important questions were under discussion that involved spirited contests. The principal ones were the election of the two United States senators from Missouri, the location of the temporary seat of

[59] *Ibid.*

[60] *Mo. Gaz.*, Oct. 11, 1820. Scott received five thousand three hundred and eighty votes. The proclamation was dated Sept. 28, 1820.

[61] *Mo. Intell.*, Oct. 14, 1820; *St. Louis Enquirer*, Sept. 30, 1820.

[62] *St. Louis Enquirer*, Sept. 30, 1820.

government, and the proposing of constitutional amendments. The first was settled within two weeks, the second towards the end of the session, and the last was defeated.

The election of the two United States senators from Missouri had been before the public from the meeting of the convention. It had done much to bring about the St. Louis caucus and had been instrumental in defeating Clark. The August election had not settled the question, it had merely drawn the conflicting forces farther apart, cementing the elements in each. The convening of the legislature brought the subject up for final settlement. The house on the day following its organization had before it a resolution providing for the senatorial election being held on September 25th. This resolution was received on September 20th on motion of Ball of St. Louis.[63] An election on the 25th would probably have meant Benton's defeat, owing to the lack of time his forces would have had in securing sufficient votes.

The first law passed by the general assembly of the State of Missouri was on this question of electing United States senators. It was signed by the governor on September 28th.[64] The law provided for a joint session of both houses and for a simple majority vote of the votes cast. By a joint resolution passed on September 29th, the first election for this purpose was set at 3 o'clock P. M., on Monday, October 2nd.[65] According to the provisions of this resolution and the law governing senatorial elections, the senate and house convened in the chamber of the latter. The votes were cast *viva voce:* an attempt had been made in the Senate to obtain a vote by ballot but this was lost by a large majority.[66] The results of the election were as follows: Barton received thirty-four votes; Benton, twenty-seven; John B. C. Lucas, sixteen; Henry Elliott, ten; John Rice Jones, nine; Nathaniel Cook, eight. There were fifty-two members of the general assembly voting, and as twenty-seven

[63] *St. Louis Enquirer*, Sept. 30, 1820.
[64] *Laws of Mo.*, 1820, pp. 31.
[65] *Senate Journal*, p. 28.
[66] *Senate Journal*, pp. 32, 34; *Mo. Intell.*, Oct. 14, 1820; *St. Louis Enquirer*, Oct. 7, 1820.

votes was a majority, Barton and Benton had been elected Missouri's first United States Senators.

The election was dramatic. According to rumour, which has never been disproved and which fits admirably into place with undisputed and authentic historical facts, the votes of two men,—one, Daniel Ralls, who from his death-bed of twelve hours later cast his vote for Benton, and the other, Marie P. Leduc, who, hating Benton, was persuaded by his French friends to vote for him instead of Lucas,—finally determined the elevation of Thomas Hart Benton to the United States Senate.[67] The work and the credit, however, of securing the larger number of the other twenty-five votes for Benton belonged to one, who within four years was treated as an enemy by Benton and who within a decade was defeated for reelection by him,—David Barton. The history of Missouri nowhere reveals so unnatural a deed, so perfidious an act, as the turning of Benton against Barton. The faults of Barton were many but his ability and honesty were never questioned and his nature was the most lovable. The public character and mind of Benton were perfect, but his domineering, brutal, conceited disposition was apparent in most of his work. One of the foulest blots in the life of the Great Statesman was this defeating the friend who had raised him to the heights of a conqueror. Barton wagered even his popularity in overcoming the unpopularity of Benton. The latter could never have won victory in 1820 without the unselfish support of his friend. The popular condemnation of Benton's brutal murder of the talented son of Judge Lucas had not subsided and he was frequently referred to as the man of blood, the assassin.[68] For Barton to have thus jeopardized his position for Benton and for Benton to have so perfidiously betrayed Barton, is one of the tragedies in the political history of the State.

The votes cast for the senatorial candidates were sectional. These votes showed that St. Louis and the north Missouri counties, including Cooper, were in control of the legislature. All except five of the votes for Barton came from these quarters

[67] Darby, *Recollections*, pp. 29ff.
[68] *Mo. Gas.*, spring and summer of 1820.

and similarly all except six for Benton. Lucas received his support, except three votes, from south of the river, and was unable to obtain a single vote from St. Louis county. The opposition of independent men to Lucas was based on his strict construction of the laws governing the old Spanish land claims. This was played upon by the Benton forces and is said to have induced Leduc to cast his vote for Benton. Elliott received his support from south of the river but none from St. Louis county. Jones received one vote each from St. Louis and St. Charles counties and his other votes from south of the river. Cook received his support from the counties north of the river and from Cooper and St. Louis counties.[69] The concentration of the anti-Benton men on one candidate would easily have defeated Benton. That there were any Benton votes cast for the other candidates is improbable considering the thorough campaign waged by Benton and Barton to secure support.

Out-rivaling the interest and controversy created by the senatorial election, was the struggle over the location of the temporary seat of government. Although not as important as the present day question of prohibition, the location of the temporary seat of government was none the less the great obstructive measure before the first State general assembly. This question held the attention of the legislators from September 20th to November 25th, a period of sixty-six days out of an eighty-six day session. The ties of political leadership were broken and the interests of sections became supreme. Judging from the time spent and the number of votes taken, the location of the temporary seat of government was seemingly regarded as the most weighty problem that confronted the new State.

The subject was brought before the house in a resolution introduced by Devore, of St. Charles. This resolution, which was tabled, stated that it was then expedient to adjourn the present session from St. Louis to ————.[70] The house then passed a bill locating the temporary seat of government at Potosi.[71] The senate struck out Potosi and inserted Cote Sans

[69] *St. Louis Enquirer*, Oct. 7, 1820; *Senate Journal*, p. 28.
[70] *St. Louis Enquirer*, Sept. 30, 1820. Introduced Sept. 20, 1820.
[71] *Mo. Gaz.*, Oct. 25, 1820; *Mo. Intell.*, Nov. 4, 1820.

Dessein.[72] The house struck out Cote Sans Dessein by a vote of twenty-four to eleven. A motion was made to insert St. Louis, this lost by a vote of six to twenty-nine; St. Charles was then proposed and voted down; Franklin lost by twelve to twenty-three; Florissant, by seven to twenty-eight; St. Charles again lost, by fifteen to twenty; Boonville, by thirteen to twenty-two. By a vote of eighteen to seventeen—all eighteen votes being from St. Louis, Cooper, and the north Missouri counties—the house decided to leave untouched, but did not adopt, the senate's amendment.[73] The question was not brought up again in the house for ten days, which time was probably employed by the representatives in lobbying for votes. On reconsideration of the question, Franklin was proposed and lost; St. Charles, Boonville, St. Louis, Ste. Genevieve and Herculaneum, were each in turn voted down; finally by the close vote of twenty to nineteen Franklin was inserted, and the amended bill returned to the senate.[74] The senate refused to concur in the amendment of the house and a joint conference committee of three members from each body was appointed.[75] After considering the subject for a week, this committee being unable to agree was discharged.[76] McGirk, of St. Louis, then had a resolution adopted by the senate requesting the house for a simple conference. Before the house had replied, McGirk introduced in the Senate a resolution locating the temporary seat of government at St. Louis. Emmons, of St. Charles, had this last resolution amended by striking out St. Louis, the vote being seven to three.[77] St. Charles was then voted down by four to six; Franklin, by two to eight; Potosi, by five to five. Moore, of Ste. Genevieve, tried to have the question postponed until March 1, 1821, but was defeated one to eleven.[78] St. Louis was then decided on by a vote of six to six and the president of the senate voting affirmatively. This vote was reconsidered by a vote of six to six and the president voting affirma-

[72] *Ibid.*
[73] *Ibid.*
[74] *Ibid.*
[75] *Senate Journal*, p. 98.
[76] *Senate Journal*, pp. 117, 119.
[77] *Ibid.*
[78] *Ibid.*, p. 122.

tively. St. Louis than lost by five to seven; Potosi, by four to eight; St. Charles by six to six, the president voting in the negative; and Newport, in Franklin county, by two to ten.[79] The simple conference requested of the house was then discharged by the senate and on motion of McGirk, of St. Louis, the senate by a vote of seven to five decided to adhere to its original amendment, i. e., Cote Sans Dessein.[80] The house adhered to its amendment in favor of Franklin, and the original bill with the various amendments was lost. The house then appointed a committee which brought in a new bill. It is probable, but not certain, that St. Charles was decided upon in this bill.[81] The Senate took up the new house bill, rushed it through and adopted it with an amendment in one day by a vote of seven to five. The house concurred in the amendment on November 25th, the bill received the governor's signature on the same day.[82] By this law the seat of government was located at the town of St. Charles until October 1, 1826. On motion of McGirk, of St. Louis, the following propositions of the citizens of St. Charles were entered on the journal of the senate:

> **The undersigned, for and in behalf of the citizens of St. Charles, pledge themselves, should the temporary seat of government be established at that place, to furnish free of expense to the state, rooms suitable for the accommodation of both branches of the General Assembly, and also committee rooms."**
>
> **8th November, 1820.**
>
> **Benjamin Emmons,**
> **William Smith,**
> **Uriah J. Devore,**
> **Joseph Evans,**
> **Nathaniel Simonds,**
> **R. & J. Heath.**[83]

The consideration of the location of the temporary seat of government had brought forward the claims of nine counties for this honor, and had wasted the energies of the general assembly for over two-thirds of the session.

Surpassing in importance, both in worth and in public opinion, the location of the temporary seat of government,

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[79] *Ibid.*, p. 123.
[80] *Ibid.*, p. 124.
[81] *Ibid.*, pp. 126, 136.
[82] *Ibid.*, p. 139; *Mo. Laws*, 1820, p. 37.
[83] *Senate Journal*, p. 139. *Cf.*, *Enquirer*, Oct. 1821, editorials.

were the amendments proposed to the constitution. Although the legislators settled, or rather defeated, the latter in little time and although the struggle over these amendments could not compare with that waged over the temporary capital, to the people of the State the constitutional amendments were the greatest pieces of legislation before the general assembly. Even before the constitution had been adopted, several serious criticisms were current regarding some of its provisions. During the campaign in July and August, 1820, these criticisms became stronger. To the people the constitution had several defects and it was the wish of the voters that the first general assembly begin the correcting of these defects. The high minimum salaries provided for the governor and the judges, the creation of the new office of chancellor, and to some degree the life term of judges and their appointive tenure by the governor and senate, were unpopular. The high salary clauses and the chancellor clause were especially subjected to popular condemnation. If there was any single purpose that guided the voters on August 28th, it was to elect legislators and a governor that would strike these sections off the constitution. The people, however, were to temporarily experience the defeat of their wishes in this first session of their lawmakers. Only one thing was and is today certain in this respect, that eventually the wishes of the people prevail. The special session of the first State general assembly did in 1821 what the first session failed to do in 1820, and the second State general assembly endorsed the work of the special session.

Petitions from the inhabitants of Madison and Cape Girardeau counties on amendments to the constitution were presented to the house in October.[84] Similar ones were circulated in nearly one-half of the counties, and these were presented to the legislature, but the lack of a complete journal of both houses and the gaps in the newspapers, prevent the securing of accurate information as to the names of these counties.[85] Governor McNair sent a special message to both branches of the legislature recommending an alteration in the constitu-

[84] *Mo. Intell.*, Nov. 4, 1820.
[85] (Jackson) *Independent Patriot*, Dec. 30, 1820.

tion in regard to lowering the salaries of the judges.[85a]. The consideration of the subject and of other proposed amendments was not seriously begun, however, until the latter part of November. The following amendments were then brought up for a vote in the house:

Proposed amendments to the Constitution.

Be it proposed by the General Assembly of the State of Missouri, That amendments be made to the Constitution of this state, in the following articles and sections, thereof as follows:

Article 3d

Sec. 34.—The General Assembly may establish new counties and fix county line in such manner as they may deem expedient. *Provided.*, That no county now established or hereafter to be established, shall thereby be reduced to a less superficial extent than four hundred square miles.

Article 4th

Sec. 13.—The salary of the Governor may be either less or more than two thousand dollars annually to be fixed by law from time to time.

Sec. 23.—The General Assembly shall not provide that sheriffs, and coroners be otherwise appointed than by election of the qualified electors.

Article 5th

Sec. 1.—The office of Chancellor shall be and the same is hereby abolished.

Sec. 5.—The General Assembly shall not direct that the supreme court be held at one place only.

Sec. 9, 10, & 11.—The court of chancery and the circuit courts shall always have original jurisdiction in all matters of equity and a general control over executors, administrators, guardians and minors, subject to appeal in all cases to the supreme court, under such limitations as the general assembly may by law provide.

Sec. 13.—The compensation to each of the Judges of the supreme and circuit courts and chancellor may be less than two thousand dollars annually to be fixed by law from time to time, and the Judges of the supreme court, Judges of the circuit courts and chancellor shall hold their respective offices during six years from and after their respective appointments, and until their successors shall be duly appointed and qualified, who shall be chosen by joint vote of both houses of the General Assembly.

Sec. 16.—Any judge of the supreme or circuit courts and chancellor shall be removed from office, on the address of two-thirds of each House of the General Assembly to the Governor for that purpose.

as a new article

That no person holding any office under the United States shall be eligible or appointed to any office under the authority of this state.[85b]

Geyer, of St. Louis, moved to postpone the further consideration of these amendments until the next session, but his motion

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[85a] *St. Louis Enquirer*, Oct. 14, 1820. The date and complete content of this message is not known.

[85b] (Jackson) *Independent Patriot*, Dec. 30, 1820.

failed to carry. McGirk, of Howard, then submitted the following resolution:

"Resolved, That we deem it inexpedient at this session of the present General Assembly to propose any amendments to the constitution.

1st—Because one-half of the people of this state have not petitioned that amendments should be proposed without which we cannot know their will,

2nd—Because we have not been admitted into the Federal union, until which time we deem a change inexpedient—and

3rd—Because we deem it inexpedient to change our constitution until time and experience will shew [sic] that our constitution is defective and ought to be changed." [11]

This resolution was lost by a vote of eight to twenty-six. Of the eight votes cast affirmatively, three were from St. Louis; two, from Franklin; one each, from New Madrid, Cooper and Howard. Despite the provision in the amending clause of the constitution requiring an affirmative vote of two-thirds of all the members elected to each house to propose and to adopt amendments, Rutter, of Cape Girardeau, submitted a resolution that a two-thirds vote of the members *present* was sufficient. This was lost by a vote of eleven to twenty-three. Of the eleven votes favoring this obviously illegal resolution, three were from Cape Girardeau, two each, from Washington and Ste. Genevieve, one each, from St. Charles, Pike, Cooper and Madison. After this preliminary skirmish the house took up the consideration of the several amendments proposed. The vote on the first amendment submitted was seventeen to seventeen and was widely distributed both among counties and among representatives from a county, excepting, however, the counties of Ste. Genevieve, which gave the amendment its entire support, and St. Louis and New Madrid, which opposed the amendment with all their votes. The vote on the salary of the governor was twenty-seven to seven. The seven votes cast against this popular measure were distributed as follows: three from St. Louis, two from Franklin, and one each, from New Madrid and Howard. The vote on the amendment prohibiting the legislature from changing the tenure of the sheriff and coroner was eighteen to sixteen. Of the sixteen votes against this measure, twelve of the fifteen counties were represented—St. Charles cast three; St. Louis and Cooper each, two; others scattering. The vote on the amendment

[11] *Ibid.* All proceedings of the house are from same source.

abolishing the office of chancellor was twenty-five to ten: the ten negative votes were distributed as follows—St. Louis, four; New Madrid and Howard, each two; Franklin and Ste. Genevieve, each one. The vote on the proposed amendment to section five of article five was twenty-two to thirteen, and on the amendment to sections nine, ten and eleven, of article five, was twenty-five to eleven. The amendment to section thirteen, of article five, was divided into two parts. The vote on the salary of the judges was twenty-seven to nine. The nine negative votes were distributed as follows: four from St. Louis; two each, from New Madrid and Howard; one from Franklin. The vote on the six years term for judges and for the appointive tenure by a joint vote of both houses, was twenty-seven to nine. The nine negative votes cast on this measure were distributed as follows: St. Louis four; New Madrid two; Franklin, Howard and Ste. Genevieve, each one. The backbone of all this opposition was: Ball, Geyer, Leduc and Walton of St. Louis; Hall and Waters of New Madrid; Heath of Franklin; Relfe of Ste. Genevieve; Williams and McGirk of Howard. The vote on the amendment proposed to section sixteen of article five was eighteen to sixteen. The negative votes were distributed as follows: four from St. Louis; three each from Howard and Cooper; and two from St. Charles; one each from Jefferson, New Madrid, Franklin, and Ste. Genevieve. The vote on the new article was twenty-four to eleven. The eleven negative votes were distributed as follows: four from St. Louis; two each, from St. Charles and New Madrid; one each from Franklin, Cooper and Howard. Since the constitutional majority of two-thirds of the members elected would have necessitated twenty-nine votes, and since no measure received more than twenty-seven votes, all of the amendments submitted were lost.

While the house was attempting to pass its proposed amendments, the senate was considering three that had originated there. These three senate amendments were as follows:

Article 4th.

Sect. 13. The governor shall receive an annual compensation for his services, to be fixed by law, which shall not be diminished during his continuance in office.

Article 5th.

Sect. 1. That the office of Chancellor shall be abolished, and the chancery powers shall be vested in the supreme and circuit courts, in such manner as the general assembly shall by law provide.

Article 5th.

Sect. 13. That the judges of the supreme and circuit courts, and chancellor, if not abolished, shall hold their offices during six years from and after their respective appointments, unless sooner removed; who shall be chosen by a joint vote of the Senate and House of Representatives of the state; and the compensation of the said judges and chancellor, if his office be not abolished, may be less than two thousand dollars, annually, to be fixed by law from time to time.[88]

These amendments passed the senate on November 28th, by large majorities, the largest number of negative votes being two.[89] These measures, unlike thóse considered, in the house, were all important ones and were popular with the people. On being brought to a vote in the house, they all failed to pass, and an attempt was even made and received eight votes, to postpone the further consideration of amendments.[90] The opposition of less than a dozen representatives, in some instances of only eight representatives, had thwarted not only the wishes of the legislature but those of the people of the State. The leaders of this small but well knit opposition were McGirk of Howard county and Geyer of St. Louis county. Their ability as politicians aided by the provisions in the amending clause of the constitution enabled them to successfully stand in the way of what the voters and their representatives desired. From the standpoint of the worth of the amendments, there was as much to censure as to favor in them: from the viewpoint of the people, however, the amendments were desirable.

The action of the house in refusing to decrease the salaries of the governor and judges was in accord with their previous act of allowing a fair if not a high compensation, considering the times, to members and officers of the general assembly. The latter bill was the first to receive the veto of a governor of this State and was also the first to become a law over that veto. This compensation bill originated in the house and having passed both chambers, was placed in the hands of the governor. The governor courageously withheld his signature and returned

[88] (Jackson) *Independent Patriot*, Dec. 23, 1820.
[89] *Senate Journal*, pp. 142f.
[90] (Jackson) *Independent Patriot*, Dec. 23, 1820.

the bill to the place of its inception accompanied by the following enlightened and public spirited message:

A communication from the Governor "To the Senate and House of Representatives.

"I have had under consideration the bill passed by the two Houses of the General Assembly entitled, "an act regulating the compensation of the members of the General Assembly:" and after bestowing on its provisions that deliberation and reflection due to its importance, I feel bound to withhold my approbation.

"1. In pursuance of that system of economy which the financial condition of the state requires, I have already deemed it expedient to recommend a reduction in other branches of public expenditure. The allowance of the contemplated pay to the members of the General Assembly, would seem to me inconsistent with, and a clear departure from that system.

"2. If the bill were to operate on the present session only, though I might still think it objectionable, I might not think it imperatively my duty to interpose the executive veto; but as the commencement of a system which might be drawn into dangerous precedents, I cannot suppress my objections, particularly when I reflect, that all experience shows it is much easier to increase than diminish an allowance, when once established in the beginning.

"For these reasons I have felt it my duty to withhold my approbation of the before mentioned bill, which together with my objections, is herewith returned to the House of Representatives.

I have the honor to be, with great respect, your ob't. serv.t.

St. Louis, 17th Oct. 1820. A. M'Nair." [91]

The house by the large majority vote of twenty-eight to seven passed the bill over the governor's veto and on the following day, October 19th, the senate, by a vote of nine to three, gave it the force of a law,—it being signed by the presiding officer of each chamber.[92] This law regulated the *per diem* compensation of members of the general assembly for attendance at four dollars; of the presiding officers and the chief clerk of each house at five dollars; of the two assistant clerks at four dollars; and of the two doorkeepers at three dollars. The clerical force of the legislature was, as is seen from this law, ridiculously small in comparison with that employed in later days: and the omission of a regular staff and company of salaried pages and janitors is beyond the appreciation of one familiar with the payroll of a twentieth century state legislature. The members and the presiding officers of both houses were further allowed mileage at the rate of three dollars for every twenty-five miles "they must necessarily travel, going to and from the said assemblies." [93] Such were the extravagant salaries carried in this law that pro-

[91] *Senate Journal*, pp. 58f; *Mo. Gaz.*, Oct. 25, 1820; *Mo. Intell.*, Nov. 11, 1820.

[92] *Senate Journal*, pp., 58ff; *Mo. Intell.*, Nov. 18, 1820.

[93] *Mo. Laws*, 1820, pp. 34f.

voked the first State governor of Missouri to say: "I have felt it my duty to withhold my approbation of the before mentioned bill." Considered in the light of modern times, this law and its brief history cause us to waver between two convictions—praise of the courage of Governor McNair and praise of the modesty of the first State general assembly of Missouri.[94]

Nothing reveals so clearly the limited character of governmental activities in the new State and the economy adopted in conducting these activities, as a survey of the State's finances in 1820, including budget making, taxes and appropriations. The first State general assembly of Missouri with businesslike forethought resolved to estimate the probable income and expenses of the State before levying taxes or passing appropriation bills. This body being practically unlimited in its financial powers, decided to equalize the revenues and expenditures by providing new taxes or raising old ones and by economizing in appropriation items. The senate finance committee reported a budget for the year 1820-1821 which was the basis of the financial legislation of the session.[95] The probable annual expenditures were estimated by this committee as follows:

General Assembly—pay of members, rent, contingent expenses, stationery, printing laws and journals, etc., for a sixty day session..		$20,000
Salary of Governor.....	$2,000	
Salary of three Supreme Court Judges.....	6,000	
Salary of Chancellor.....	2,000	
Salary of four Circuit Judges.....	8,000	18,000
Salary of Sec. of State, Attorney General, Auditor and Treasurer.....		3,000
Contingent Expenses.....		4,000
Total.....		$45,000

The probable annual revenue was estimated as follows:

"The amount of revenue produced by the territorial mode of taxation for the year ending on the first Monday of December, 1819, was..	$24,424
"The confirmed lands within the limits of the state, are 1,087,143 acres, which being taxed as is proposed in the report, at one dollar per hundred acres, would produce, in addition to revenue by the territorial mode of taxation, the sum of.....	4,348

[94] The constitution gave the general assembly *unlimited* power to set their own compensation. *Mo. Const.*, 1820, III. 24.

[95] *Senate Journal*, pp. 74ff. Emmons was chairman. Report was made on Oct. 27.

"The lands sold by the United States on the 30th day of September, 1820, amounted to 1,250,934 acres, which being taxed as is proposed in the report, would produce the sum of..... $12,509

$41,281

The report added that this would leave "a deficit of $3,719.00, to be provided for by the revenue arising from the increased tax on slaves; the tax on the military bounty lands; sales at auction; the tax on law process, and on bank stock; which will be amply sufficient, in the opinion of the committee, to make up the deficit, and meet all the drawbacks which will be occasioned by these lands forfeited to the United States, by reason of the purchaser not making payment."

The general assembly followed in general the recommendations of this report in regard to raising revenue and making appropriations. A general land, lot, and improved real estate tax was imposed at the rate of twenty-five cents on the hundred dollar valuation; slaves and live stock over three years old were taxed at the same rate; pleasure carriages, at one per cent. of their value; furniture, at fifty cents on the hundred dollars; watches, at two dollars on the hundred dollars (both furniture and watches on sale were exempted from these taxes); and a poll tax of one dollar was imposed on free, white males over twenty-one years old. Special and license taxes were imposed on a number of objects and occupations, the most important being: a twenty dollar wine and liquor license for every six months; a merchants and peddlers tax of fifteen dollars to two hundred dollars every six months for the sale of foreign made goods; an auction tax of three dollars per one hundred dollars on personal property and one dollar and a half per one hundred dollars on real estate; an auctioneer's license of one hundred dollars for every six months; a ferry license tax; and a billiard table license of fifty dollars for every six months.[96] The appropriation bill passed at this session carried a total of $49,359.13½. The most important items in this bill were:[97]

Salary of the governor and eight judges.....$18,000.00
Salary of the secretary of state, auditor, treasurer, attorney general, adjutant general, and circuit attorneys..... 3,590.00
Contingent expenses of the office of secretary of state..... 500.00

[96] *Mo. Laws*, 1820, pp. 90f; 92f; 76ff; 83ff; 61f.
[97] *Mo. Laws*, 1820, pp. 82f.

Pay of the members of the general assembly, officers, and presidential electors	$25,000.00
Printing laws and journals of the session	1,200.00
Contingent expenses of the session, including furniture, sundry printing, stationery, fuel and janitor service, election returns of the governor and lieutenant governor, rent, state seal, etc.	1,069.13½
Total	$49,359.13½

Some of the separate items in this bill together with the incredible accuracy of the appropriation made for them, are remarkable. Only $267.11 were spent by this general assembly for its contingent printing and the representatives and senators used only $166.50 for stationery. The total printing bill of the state, excluding the constitutional convention, amounted to only $1,467.11; today the annual State printing is close to $150,000. This general assembly spent the ridiculous sum of $50 for janitor service and for fuel of the senate, and $130 for these items of the house. Such economy is wonderful. Five dollars was appropriated to G. Bassinet for making a model of the State seal, and $25.12½ was appropriated for the sundry expenses of the senate. Such economy if not parsimony is today unheard of and its early return is unlikely.[98]

Those salaries of all state officers that were not set by the constitution were provided for by legislative enactment. The salary of the attorney general was placed at five hundred dollars a year and of the secretary of state, auditor, and treasurer, each at seven hundred and fifty dollars a year.[99] The appointment of persons to these offices and to the judiciary, was an important political function of the governor and the legislature. Many applicants advanced their claims and as one observer wrote "it was a good thing to have a friend at court." [100] Governor McNair was naturally criticised for many of his acts and especially for his appointments. The latter criticism was, however, based more on disappointed ambitions than on facts. One of the foremost and ablest public men of the State was

[98] No money was appropriated in 1820 even for the pay of Gov. McNair's private secretary, William G. Pettus, who was probably compensated by the governor from his private purse.

[99] *Mo. Laws*, 1820, pp. 38f, 66, 87ff.

[100] *Mo. Intell.*, Jan. 1, 1821.

appointed secretary of state. Joshua Barton was an eminent lawyer and an honest public official. His election to the secretaryship of state was but a recognition of his talents. Edward Bates was appointed attorney general; William Christy, auditor; and Pierre Didier, treasurer. The conspicuous part played by Bates in the convention first brought him prominently before the people. His connection with the caucus was not close. His friends were supporters of both Clark and McNair. His integrity was never questioned and, although a young man, he was well versed in the law. Notwithstanding the recommendation of Bates made by McNair, the senate refused at first to confirm him. McNair sent a second communication on Bates to that body, which then endorsed his nomination.[101] William Christy was a native of Pennsylvania, was reared in that State and in Kentucky, and came to St. Louis in 1804. He had served as auditor for the Territory and was a prominent politician.[102] Pierre Didier was a native of St. Louis and his appointment to the office of State treasurer by the general assembly was probably due to the influence exerted for him by his French friends in St. Louis and the adjoining counties.[103] The appointment of the judges, including three of the supreme court, a chancellor, and four judges for the circuit courts, was a long drawn out struggle between the governor and the senate. The senate sat behind closed doors and at least two of the governor's candidates were rejected. It is probable that those finally appointed either owed their office as much to the senate as to the governor or were compromise appointees.[104] The supreme court judges finally appointed were Mathias McGirk, senator from St. Louis county, John D. Cook, of Cape Girardeau county, and John Rice Jones, of Washington county. Cook and Jones had been delegates to the constitutional convention and had been active leaders in that body. The former was barely qualified to serve as judge on account of his youth,

[101] *Senate Journal*, 1820, p. 36.

[102] Houck, *Hist. Mo.*, III. 48.

[103] The office of State treasurer was filled according to the constitution by the general assembly, the governor having no voice in selecting the occupant.

[104] *St. Louis Enquirer*, Nov. 18, 1820, editorial.

the latter on account of his age.[105] McGirk resigned his seat in the senate on November 27th, in order to accept the appointment to the supreme court bench.[106] He had served in the Territorial Council and this was the only public office he had filled. Like John D. Cook, McGirk was a young man being barely thirty years of age. He was a popular man but was not especially learned in the law. He served, however, as supreme court judge for twenty-one years and it is said that his opinions in the first six volumes of the *Missouri Reports* will compare favorably with those of any other judge of his time.[107] William Harper was appointed chancellor. Little is known regarding his life but it is presumed that he later went to South Carolina several years after his office had been abolished in Missouri.[108] The four circuit court judges were David Todd, Rufus Pettibone, Nathaniel Beverly Tucker and Richard S. Thomas. All were good lawyers, the first three being graduates of colleges. Thomas had been a delegate to the constitutional convention and only the anti-slavery attitude had prevented Pettibone from election to that body.[109] The personnel of both the executive and judicial departments of the State government was high. Much of the stability that is apparent in the early history of the State was doubtless due to the character and ability of such public officers as Bates, Barton, Cook, Jones, McGirk, and other eminent lawyers of that day.

One of the important political acts of the general assembly at this session was the election of the first presidential electors from Missouri. This took place at 3 P. M., on November 2. The election was made by a joint vote of both houses. "Those members of the Legislature whose names were before the public as candidates for electors, declined standing a poll, the better opinion prevailing that a member of the Legislature could not consistently with the Constitution of this state hold the office

[105] The constitution had a minimum age qualification for judges of thirty years, and a maximum one of sixty-five years.

[106] *Senate Journal*, 1820, p. 141.

[107] *Bay*, pp. 536. He came to Missouri about 1814 or 1816. After his appointment to the bench he moved to Montgomery county and married into the Tabbott family.

[108] Houck, *His. Mo.*, III. 267.

[109] *Bay*, pp. 389ff., 98f., 251; Houck, *Hist. Mo.*, III, 9ff.

of elector, and that the acceptance of the latter office would vacate the former." [110] The three electors chosen were Major William Christy, of St. Louis county, John S. Brickey, of Cooper, and William Shannon, of Ste. Genevieve. All three pledged themselves to vote for James Monroe as president and Daniel D. Tomkins for vice president of the United States.[111]

The legislative activity of the first general assembly at this session was considerable despite the controversies waged over the important elections and appointments made by the general assembly and by the governor and senate and despite the long drawn out struggles over the location of the temporary seat of government and the proposing of constitutional amendments. Fifty-one laws were enacted, the majority being necessary for perfecting the organization of the State government. The duties of the various state and local administrative officials were determined; the judiciary was defined and regulated as regards jurisdiction and the time and place of holding court; provision was made for taking the census; and the militia was given an organization. Some private bills for incorporating academies and for the relief of individuals were also passed. Excepting the state organization laws and the revenue measures, the most important laws passed related to the establishing of new counties, the selecting of six of the twelve Salt Springs donated by the National Government, the appointing of a commission to report on a site for the permanent seat of government, and the preventing of waste on the public school lands. Ten new counties were established at this session—Boone, Callaway, Chariton, Cole, Gasconade, Perry, Ray, Saline, Lillard and Ralls. Five lay north of the Missouri River, five south. Eight of these, however, were formed from either the Salt River or the Boone's Lick country and these greatly increased the power of the frontier in the legislature. The commission appointed to report on the location of the permanent seat of government was composed of John Thornton, of Howard county, Robert Guy Watson, of New Madrid, John B. White, of Pike, James Logan, of Wayne, and Jesse B. Boone, of Mont-

[110] *St. Louis Enquirer*, Nov. 4, 1820; *Senate Journal*, 1820, p. 89.
[111] *Ibid.*

gomery.[112] Only two of the five commissioners were legislators, Logan being a senator and Boone a representative. A resolution was offered in the house by Geyer, of St. Louis, for the committee on finances to inquire into the expediency of authorizing a loan of $1,000,000 on the State's credit, redeemable in twenty years, for establishing a State bank.[113] Nothing came of this attempt to establish a State bank and seventeen years passed before such an institution was chartered in Missouri. Attempt was also made to select the designs for the Great Seal of the State. The house wanted as part of the emblem "a cock close around, resting on a sheaf of wheat;" the senate struck out "cock" and inserted "an eagle."[114] It was not, however, until 1822 that a law was passed describing the Great Seal.

Besides enacting laws the general assembly seems to have passed several resolutions and memorials. The volume of session acts of this session does not incorporate any of these. A resolution was introduced and was probably passed for correcting the errors found in the printed draft of the constitution; and another providing that an exchange of the laws of the State be made with New Hampshire, Pennsylvania and Virginia.[115] Several memorials to Congress were also introduced and appear to have passed. These were on the questions of pre-emption rights, an extension of credit for paying for public lands, and on the subject of laying additional duties on foreign lead and iron. A protective tariff on these minerals that were produced so extensively in Missouri was desired by a large part of the population even in 1820. No record has been found of these memorials having been presented to Congress in 1820 and 1821.[116] Finally after a session of eighty-six days, seventy-four being devoted to legislation, the first session of the general assembly adjourned on December 12, 1820.[117]

[112] *Mo. Laws*, 1820, pp. 15f.
[113] *Mo. Intell.*, Nov. 1, 1820.
[114] *Senate Journal*, 1820, pp. 145f.
[115] *Senate Journal*, 1820, pp. 29, 40.
[116] *St. Louis Enquirer*, Sept. 30, 1820; *Senate Journal*, 1820, pp. 84; *Mo. Gas.*, Oct. 11, 25, Nov. 1, 1820.
[117] *Mo. Intell.*, Jan. 1, 1821. The Intelligencer says after a session of eighty-four days.

CHAPTER X.

SECOND MISSOURI COMPROMISE.

The framing of the Missouri constitution of 1820, the election of state and local officials, and the organization of a state government, did not, as had been expected, either actually or virtually settle Missouri's struggle for statehood. That Missouri had a state government in nearly full working, that Missourians regarded Missouri as a state, and that a large part of the Nation shared this view, did not deter northern statesmen and their constituents from making plans to delay, if not defeat, Missouri's admission. These plans were publicly expressed in the eastern newspapers and were copied by the Missouri press as early as in September, 1820.[1]

It was, therefore, not surprising that Barton, Benton and Scott were not permitted to take their seats in Congress when they arrived in Washington, November 16, 1820.[2] The apponents of the State maintained that until the 1820 constitution was accepted, Missouri's senators and representative in Congress were suspended. This viewpoint was maintained and enforced during the 1820-1821 session of Congress.[3]

Scott would have been allowed a seat in the House if he had acted as a *delegate* but such an act would have impliedly confessed that Missouri was still a territory. This important point was concisely stated by Scott in a letter to C. S. Hempstead, dated Washington City, December 31, 1820:

> "*None of us have our seats. I will not act as Delegate;* because I take the ground that we are a STATE—and so do all our friends—and were I to act as *Delegate*, it might be construed into an acknowldgement that we are *still a territory*. The consequence is, that the business of Missouri, land claims and all, stand still, till we are disposed of in our state pretensions." [4]

These "state pretensions" were brought before the attention of the second session of the sixteenth Congress shortly

[1] *Cf., St. Louis Enq.*, Sept.-Dec. 1820.
[2] *Mo. Intell.*, Dec. 18, 1820, Jan. 1, 1821.
[3] *Cf.*, letter of Col. John Williams, U. S. Senator from Tennessee, dated, Washington, Jan. 7, 1821. (*T. A. Smith Mss.*)
[4] *St. Louis Enq.*, Jan. 27, 1821.

after the convening of the two houses. A copy of the Missouri constitution was laid before the Senate on November 14th—the second day of the session: and another copy was laid before the House by Mr. Scott on the 16th inst. Both bodies at once referred these documents to committees.[5]

The Senate was known to be favorably inclined towards admitting Missouri, but the House was regarded as being strongly opposed to this. The Senate committee to which had been referred the Missouri constitution reported favorably on November 29th and presented a resolution declaring the admission of the new State.[6] The opponents of admission and of the resolution at once attacked that clause in Missouri's constitution which made it commandatory on the general assembly of the State to pass laws "to prevent free negroes and mulattoes from coming to, and settling in, this state, under any pretext whatsoever." To conciliate these opponents in the Senate the following proviso to the statehood resolution was offered by Mr. Eaton of Tennessee:

> "*Provided*, That nothing herein contained shall be so construed as to give the assent of Congress to any provision in the constitution of Missouri, if any such there be, which contravenes that clause in the Constitution of the United States, which declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.'" [7]

This proviso was defeated by a vote of twenty-one to twenty-four, and for the next four days the Missouri Question was long debated in the Senate. The resolution of admission having been finally amended by the Eaton proviso, was adopted by a vote of twenty-six to eighteen on December 11th, and was sent to the House, where after being read once it was ordered to lie on the table.[8]

During this time the House had been considering the Missouri Question independently. The House committee, of which Mr. Lowndes was chairman, and to which had been referred the Missouri constitution, presented a report on November 23rd advising the admission of Missouri. This report made mention of the objectionable free negro clause in the

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[5] *Annals of Cong.*, pp. 10, 440.
[6] *Ibid.*, p. 26f.; 31ff.
[7] *Ibid.*, p. 41.
[8] *Ibid.*, pp. 45, 116, 641f.

twenty-sixth section of article three of the Missouri constitution but said that such a provision existed in the laws of at least one state, Delaware, and that discrimination was made everywhere between whites and blacks regarding voting and jury service. It further advised that such questions as these were judicial questions and not legislative ones.[9] This report was accompanied by a resolution of admittance which after being read the second time was referred to the committee of the whole. The Lowndes resolution was debated in the committee of the whole and before the House from December 6th to the 13th and was finally rejected for engrossment by a vote of seventy-nine to ninety-three.[10] The first phase of the struggle leading up to the second Missouri Compromise had ended. The northern majority in the House had not only succeeded in preventing the admission of Missouri during 1820, but had put a doubt in the hearts of Missouri's supporters that the State would not be admitted even during that Congress.

When Missouri received news of the new Missouri struggle in Congress and of the defeat of the Lowndes resolution in the House, the press and the people of the State took a firm but pessimistic attitude. The expressions of public opinion were strangely neither boastful nor defiant. Never did Missouri more calmly and determinedly analyze a condition critical to herself and to the Nation than at this time. Never was a people more united, more of one thought in their convictions, than were Missourians during the winter of 1820-1821. They regarded Missouri as a state, and, whether or not Congress passed an act of admission, were determined that she would never again become a territory unless force was used. They thought that Missouri had acted legally when a state constitution was formed and adopted and a state government was established. They saw nothing in Missouri's constitution that was contrary to the United States constitution, but, they said, if by chance there were an illegal provision in it then the interpretation of this was a judicial and not a legislative function. They were convinced that the northern members of Congress were trying

[9] *Am. State Papers, Misc.*, II. 625.
[10] *Ibid.*, p. 670.

to embarrass Missouri, increase the extent of free soil, and impose their will on the slave states.[10a]

While the Missouri press was full of editorials expressing these views, only one utterance is preserved today that issued from a judicial body. The St. Louis county circuit court on December 18, 1820, resolved that "The state government *was not only theoretically formed, but in full and constitutional operation*, as regarded the constitution of the United States and that of the State of Missouri." [11]

Such convictions were not based merely on hasty and natural inclination but were founded on full information of the debates in Congress and were in accord with the many public letters of Barton and Benton, which appeared in Missouri newspapers. Benton wrote to the editor of the *Missouri Intelligencer* on November 22nd, that the northern restrictionists in the House would oppose Missouri on the pretext of the free negro and mulatto clause "when almost every state in the Union, even the free states themselves, have the same provision, as will be freely shown in the course of the debates here." [12] And on the same date Benton wrote to the *Enquirer* in part as follows:

> "Barton, Scott, and myself have searched the laws of the different states, and found provisions on this subject [the free negro and mulatto clause] which will make a fine contrast with the speeches of some of the northern members." [13]

On December 19th, Benton again wrote the *Intelligencer* and stated that "all the friends of Missouri here consider her to be a State in point of fact and in point of right; and expect her to go on calmly and firmly with the operations of her government, preserving all the points of relationship with the government of the United States which her anomalous position will permit of." [14]

On December 3rd, Barton wrote the *St. Louis Enquirer* that New York was leading the restrictionists and that "most of the northern and northwestern members chime in; and if

[10a] *St. Charles Mo.*, Jan. 13, 1821; *St. Louis Enq.*, Dec. 23, 1820, Jan. 20, 27, 1821; (*St. Louis*) *Mo. Gaz.*, Dec. 20, 27, 1820; Jan. 10, Feb. 7, 1821.

[11] *Niles Reg.*, Feb. 3, 1821.

[12] *Mo. Intell.*, Jan. 1, 1821.

[13] *St. Louis Enq.*, Dec. 23, 1820.

[14] *Mo. Intell.*, Jan. 29, 1821. *Cf.*, *St. Louis Enq.*, Jan. 21, 1821.

I am not misinformed, some of the cabinet aid and abet the enemies of our rights—We should (not) be surprised after four years to see our next President riding into the City of Washington, not on a white horse, or on an ass's colt, but on a free negro or mulatto . . . . but if we should be rejected, I hope Missouri has spirit and energy enough to adhere to her constitution in respect to the disputed point, and if it must go down, to go down with it." [15]

Having the backing of the Senate and of nearly half of the House, endorsed by the Executive and supposedly by the judiciary, convinced of the justice of their cause and of the injustice attempted to be hoisted on them, and guided by their public men and statesmen, Missouri had no hesitancy in taking a firm stand for her state constitution and her state government. To have acted otherwise would either have branded her inhabitants as cowards or have revealed a strong anti-slavery or restrictionist feeling in the State. If Congress had not finally passed an act of admission the situation in Missouri might have become critical.[16]

The Christmas holidays of 1820 had barely ended when the Missouri Question was again before the House. This time the subject was considered in a new form: Was Missouri a state or a territory? And what was the condition of the Federal judiciary in Missouri? Three memorials from the legislature of Missouri had been presented to the House. The debate there turned on the point as to whether the Journal of the House should record these memorials as coming from the State or the Territory of Missouri. The first two weeks in January were spent in debating these points and it was decided to enter the memorials as being simply from Missouri.[17]

The Senate resolution of admission was read the second time on January 15th in the House and was then referred to the committee of the whole. While this resolution was up for discussion another resolution was introduced by Mr. Eustis

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[15] *St. Louis Enq.*, Dec. 30, 1820; *Mo. Intell.*, Jan. 15, 1821. *Cf.*, letter from "One of Missouri's Senators to Congress" (probably Barton), in *Mo. Intell.*, Jan. 29, 1821.

[16] *Cf.*, *Jefferson's Writings*, X. 175ff, letter to Gallatin, dated Dec. 26, 1820.

[17] *Annals*, pp. 73-863.

admitting Missouri on a certain (?) day provided the free negro and mulatto clause had been expunged from the Missouri constitution on or before that day. This last resolution was defeated for engrossment by a vote of six to one hundred and forty-six.[18] One effort having been made and lost to strike out the proviso in the Senate's resolution, the following proviso to that resolution was introduced by Mr. Foot:

"*Provided*, That it shall be taken as a fundamental condition, upon which the said State is incorporated in the Union, that so much of the 26th section of the 3rd article of the constitution which has been submitted to Congress, as declares it shall be the duty of the General Assembly 'to prevent free negroes and mulattoes from coming to, or settling in, this State, under any pretext whatsoever, shall be expunged, within two years from the passage of this resolution, by the General Assembly of Missouri, in the manner prescribed for amending said constitution." [19]

Mr. Storrs moved an amendment to Mr. Foot's proviso, which was, to strike out all of the latter after the word "Union" and in lieu thereof insert the following:

"And to be of perpetual obligation on the said State, (in faith whereof this resolution is passed by Congress,) that no law shall ever be enacted by the said State impairing or contravening the rights, privileges, or immunities, secured to citizens of the United States: *And provided, further*, That the Legislature acting under the constitution already adopted in Missouri as a State, shall as a convention, (for which purpose the consent of Congress is hereby granted,) declare their assent by a public act to the said condition before the next session of Congress, and transmit to Congress an attested copy of such act, by the first day of the said session." [20]

This resolution of Mr. Storrs' was lost by a vote of eighty to sixty-one and a similar one offered by M. Hackley was lost by a vote of seventy to sixty-six. Mr. Cobb then moved to strike out all of Mr. Foot's amendment after the word "Union" and insert the following:

"That the Legislature of the State of Missouri shall pass no law impairing the privileges and immunities secured to the citizens of each State, under the first clause of the second section of the fourth article of the Constitution of the United States."

This amendment was lost by a vote of seventy-four to sixty-five and Mr. Foot's was also lost.[21] A number of amendments was then proposed similar to either the Foot, Storrs, Cobb, or Senate proviso, and all were defeated. Mr. Clay seeing that all

[18] *Ibid.*, pp. 942ff.
[19] *Ibid.*, pp. 983ff.
[20] *Ibid.*, p. 990.
[21] *Ibid.*, p. 1002.

effort at amendment had failed, and desirous of settling the question, moved to refer the Senate's resolution to a committee of thirteen members. This motion was agreed to and the thirteen members were appointed—eight of whom were from free states and the chairman of which was Clay.[22]

This committee reported a resolution of admission to the House on February 10th, which was similar to the one finally adopted. The two points of difference were that this original Clay resolution did not refer to the free negro and mulatto provision by clause, section and article, but simply stated that Missouri should not pass laws preventing any description of persons from coming to and settling in Missouri, who were citizens of other States; and that it contained a proviso, later cut out, which stated that nothing in this resolution was to impair the exercise by Missouri of any right constitutionally exercised by the original States.[23] After lengthy debate the Clay select committee's report was reported on unfavorably by the committee of the whole.[24] The House by the close vote of eighty-six to eighty-three refused to concur with this report and then, equally strangely, by a vote of eighty to eighty-three, refused to advance the Senate's resolution as thus amended to a third reading.[25] After voting by one hundred and one to sixty to reconsider this last vote, the House again voted down the Senate's amended resolution by eighty-two to eighty-eight.[26]

This definitely sealed the fate of the Senate's resolution in the House. It seemed that the northern representatives were to triumph and Missouri's admission would be delayed until a new Congress convened. A number of compromises had been proposed in the House and all had been defeated. The determination of the slavery restrictionists and of others to defeat Missouri had succeeded and that State's future was even darker than it had been in December. In Missouri, however, the attitude of the people was one of determined confidence in the continuance of their State government. Bitter

[22] *Ibid.*, p. 1027.
[23] *Ibid.*, p. 1080.
[24] *Ibid.*, p. 1114.
[25] *Ibid.*, p. 1116.
[26] *Ibid.*, pp. 1120, 1146.

resentment was also felt that Congress would attempt to act so perfidiously. The editor of the *St. Louis Enquirer* wrote: "And the pretext for this (opposition) is that the rights of a few vagabond negroes may possibly be infringed! . . . . The *rejection* of Missouri, not the admission, is the object to be accomplished, and the clause respecting free negroes suffices for the purpose . . . . At all events, let us by a mild, temperate, but firm demeanor, shew that we are satisfied with the justice of our cause." [27]

The determined confidence of Missouri in her state government was forcibly set forth in an editorial that appeared in the *St. Louis Enquirer* of March 10, 1821. These extracts illustrate the tone of that editorial: "It is a remarkable fact, not generally known abroad perhaps, that the monumental Missouri question, nowhere in the United States, is looked upon so calmly and dispassionately as in Missouri . . . . Our state government is in full and complete operation . . . . The territorial government is almost forgotten . . . . It is (a) matter of fact that we are a state. We both see and feel its operations . . . . It is very manifest, therefore, that such change (back to a territory) can never take place . . . . We could not, for instance by an act of ours, get back the territorial governor and judges, and the senate of the United States, entertaining their present opinion, would of course not reappoint them . . . . When the question of restriction was first agitated in congress, it excited much feeling and alarm in the then territory [of Missouri] . . . . Thoroughly understanding their rights, the People of Missouri yet waited with a most forbearing patience . . . . Bounds were, however, set to forbearance, and preparations had commenced for calling a Convention without the consent of Congress. That consent having been given . . . . Missouri proceeded with her characteristic moderation, order and firmness, to form a constitution of government . . . . In the organization of the new government, so far from manifesting any disposition ever to retrace her steps, the barely possible event (for such it was deemed) of our constitution being rejected, was anticipated and provided against. Care was taken

[27] Feb. 17, 1821.

to appoint no man to office, *whose opinion was not known to be in favor of the unqualified sovereignty of the state. An explicit assurance to that effect was required of the judges*—and it may safely be affirmed that in no township of the state could any man avowing a different opinion, have obtained the appointment of constable. The present prevailing calmness of the public mind . . . . , must not be misunderstood as the effect of doubt as to our rights, intimidation at opposition or indifference as to the result. It is the calmness of fixed determination. We know we are an independent state, and are resolved to remain so . . . . The People of Missouri have also become disgusted with the proceedings of the present session of Congress, and think it trifling to dispute with men, who set all candor and fair reasoning at defiance." [28] The tone of this editorial was representative of what appeared in other Missouri newspapers. The people of Missouri were actually less concerned over their admission than were the members of Congress. Missouri had a state constitution and a state government, and unless the complexion of the United States Senate changed there seemed little reason for thinking the State would revert to a territory. Missourians also took pride in their determined and secure attitude towards the north. There is little doubt that the peculiar position occupied by Missouri in 1820 and 1821 did much to knit closely the early pioneers of those days. Intense state pride in Missouri during those years almost reached the heights of patriotism. It speaks well for the broadmindedness and loyalty of Missourians that in 1861-65 they enlisted over 100,000 strong in the army of a Nation that forty years before had so perfidiously played low politics in refusing them admission into the Union.

The perfidiousness of Congress in seizing upon the free negro clause in Missouri's constitution was commented on by Barton in a letter dated February 11, 1821, to the *Missouri Intelligencer* and to the *St. Louis Enquirer*.[29] He wrote in part:

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[28] Cf., also *Mo. Gaz.*, Jan. 10, Feb. 7, 1821; *St. Charles Mo.*, March 24, 1821; *Mo. Intell.*, Feb. 19, March 19, 26, 1821.

[29] *Mo. Intell.*, April 16, 1821; *St. Louis Enq.*, March 24, 1821.

"You have observed, that the free negro clause in our constitution is made their pretext of opposition, though I presume no honest, intelligent man believes this to be their true reason, or would believe so, if they had not unveiled themselves . . . . These free negro apostles indulge the delusive hope that a revolution of sentiment can be effected in Missouri. They are led to this belief . . . . that large minorities in favor of restriction exist in each county! [i. e., in Missouri.] Encouraged by such hopes, and being wholly free from the embarassments of political honesty and public faith, the leaders in the House of Representatives are endeavoring to secure to themselves the benefits of an open question, and a new struggle in the succeeding Congress. It is not believed, however, that the honest republicans of the north, thus advised of their [the restrictionists] ultimate objects, will go with them through their criminal course."

The defeat of the amended Senate resolution admitting Missouri did not delay the continued discussion of the Missouri Question. This question was, however, presented in a new form on February 14th and for that day surpassed in nation-wide interest even the counting of the presidential electoral votes. Missouri had in conformity with both state and national law cast her votes for President and Vice President and had three electoral votes to be counted by Congress. The question arose whether these three votes could be officially counted since Missouri had not been admitted. Clay reported a compromise resolution whereby the results of the election were to be stated in two ways—one by including Missouri's votes, and one by omitting these votes. Clay explained the policy of this by stating that since there was opposition to recognizing Missouri as a state and since the votes of Missouri would not effect the results of the elections, he thought it wise to avoid dispute and to adopt the resolution. The discussion following this report was remarkable for its violence. However, the resolution was adopted by a vote of ninety-five to fifty.[30] This left the question of admitting Missouri an open one before both houses.

The Senate was the first to take action. A resolution of admission was introduced by Mr. Roberts, which contained the proviso that the fourth clause of the twenty-sixth section of the third article of Missouri's constitution should be modified as soon as the provisions of that constitution would admit, so that this clause would not be applicable to any persons who were citizens of the United States and that until this clause

[30] *Annals*, pp. 1147-1166.

was so modified no law should be passed in conformity with its import.[31] After several amendments had been proposed, this resolution was rejected by a vote of nineteen to twenty-four on February 21st.[32]

On the same day that the Senate rejected the Roberts' resolution, the House again took the Missouri Question under consideration. On the following day Clay proposed that a House committee of twenty-three members be appointed to act jointly with a Senate committee, which joint committee was to consider the question of Missouri's admission and of Missouri's present condition.[33] Clay's proposal was adopted and the House committee was selected—Clay being chairman. The Senate concurred in the proposition on the 24th inst., and appointed seven of its members to act with the House committee.[34] The joint committee reported on the 26th and this report, known as the Second Missouri Compromise, was adopted without change by the House on that day, by the Senate on the 28th inst., and was approved by the President on March 2nd.[35] The full text of this compromise report, of which Clay was the author, was as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That Missouri shall be admitted into this Union on an equal footing with the original States in all respects whatever, upon the fundamental condition, that the fourth clause of the twenty-sixth section of the third article of the constitution submitted on the part of said State to Congress shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the States in this Union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States: Provided, That the Legislature of the said State, by a solemn public act, shall declare the assent of the said State to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of the said act; upon the receipt whereof the President, by proclamation, shall announce the fact: whereupon, and without any further proceeding on the part of Congress, the admission of the said state into this Union, shall be considered as complete.[36]

Writing of this compromise to the editors of the *Missouri Intelligencer* and the *St. Louis Enquirer*, Barton said:

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[31] *Annals*, p. 351ff.
[32] *Ibid.*, p. 364.
[33] *Ibid.*, p. 1219.
[34] *Ibid.*, p. 382.
[35] *Ibid.*, pp. 383, 388ff; pp. 1236ff.
[36] *Stat. at Large*, 2nd Sess. 16 Cong., III, 645; *Annals*, p. 1228.

"This promise in writing obligatory required of our General Assembly is precisely tantamount to their official oaths to support the Constitution of the United States, which they have taken in obedience to our state Constitution . . . . What power Congress has to dictate any condition, however nugatory and unmeaning, our State must decide for itself. I believe, however, no better terms could be got from the north; and if they do abandon their free negro crusade, they at the same time dictate to, and humiliate Missouri; which, after losing their removed restriction, is some satisfaction to them." [87]

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[87] *Mo. Intell.*, April 16, 1821 (letter dated Feb. 27, 1821); *St. Louis Enq.*, March 31, 1821.

CHAPTER XI.

STATEHOOD IN THE UNION.

The news of the passage of the resolution providing for the admission of Missouri was received by Missourians with joy. This joy was, however, founded mainly not on the pleasant anticipation of final statehood in the Union within a few months or on a relief from suspense regarding what might have been Missouri's fate, but was founded on the defeat of the eastern slavery restrictionists. Missouri took more delight in seeing her eastern enemies defeated than in the good she obtained from her victory. The latter was appreciated but the former was uppermost in the minds of Missourians. The editor of the *St. Louis Enquirer* on May 26th made the following comment in this connection:

"The news of the admission of the State was received in this place with evident manifestations of pleasure—it beamed in the countenances of all, and was a subject of mutual congratulation—But there were no 'boastings,' or 'bonfires;' the people here knew too well what was due to propriety and their own dignity—It was for the second triumph of the Union and Missouri, that they felt rejoiced."

These people had for years been heckled, opposed, and insulted by eastern Congressmen and eastern newspapers, until mere victory over the restrictionists was more desired than the fruits of victory. A most concrete illustration of this almost revengeful attitude was a public dinner given on April 10th in Franklin, Missouri.

This dinner was "in celebration of our late triumph over eastern policy and eastern artifice. We enjoy the right of self-government, and will be admitted into the Union on a condition perfectly nugatory and foolish."[1] A large number of toasts were given of which the following were representative:

"The 27th day of February—Missouri will hail it as the day of her deliverance from artful and ambitious politicians."

"The Senate of the United States—Our buckler in the late conflict."

"The House of Representatives—A majority virtuous."

[1] *Mo. Intell.*, April 16, 1821.

"The Constitution of the United States—The meaning cannot be perverted to answer the purpose of *eastern politicians*, or make free negroes citizens of Missouri."

"The Constitution of Missouri—Formed by men understanding their powers, it conflicts with no superior instrument, and will forever defy *Eastern acuteness.*"

Accompanying this spirit of jubilance over the defeat of the east was a feeling of contempt and hatred of the restrictionists in Congress. This found expression in newspaper articles and in public speeches. One of the most striking of these was a poem which appeared in the editorial column of the *St. Charles Missourian* of May 9th. The following stanzas were selected from this piece:

"A Song for the Special Use of Certain Members of Congress.

Tune—"Paddy's Wedding."

How shrewd are we, who plainly see,
And if we don't we "guess" it O,
The way to shine and pockets line,
And all men will confess it O;
A negro slave we scorned to have,
So sold them for the dollars O;
Nutmegs of wood are just as good
If—no detection follows O.
Tid re i, &c.

Then let's join in the dance, we'll caper
& prance
With Luce and with Judy quite cheerly O,
The African fair though duskish they are
We cannot but cherish sincerely O.
Our citizens rights exertion invites
We'll "aid and assist and abet them" O.
Then buzza for the scheme! their rights
we'll redeem
Or go to the devil to get them O
Tid re i, &c.

COMUS."

There is evidence to believe that the slavery restrictionists in Missouri aided the eastern and northern members of Congress. At least this report appeared in the *National Intelligencer* of March 10th and in the *St. Louis Enquirer* of April 4th. The former contained the following article:

"We believe, indeed, that such as opposed the admission of Missouri, *in order to compel her*, by refusing to admit her on any other terms, to introduce into her constitution a clause *inhibiting slavery*, labored under the disadvantage of *incorrect information*, and of a misapprehension of the effect of the course which they proposed. The *private letters* from Missouri ought not so much to have been relied on as the *unanimous declaration of* her authorized agents."

And this caused the following comment in the *Enquirer:*

"For sixteen years a system of secret communication has been carried on from this place to the seat of the general government. It has attacked the characters of individuals, the rights of property, and the best interests of the country. Nothing virtuous, honorable, just, or advantageous to the country could escape it, and every department of the general government was made a reservoir of lies and poison.—Finally, this indefatigable agent of mischief has attacked the sovereignty of the state of Missouri, and has undertaken to array a majority of congress against her rights by imposing on the members from the non-slaveholding states the most unparalleled falsehoods. *Secret* communications have been made to effect this object, stating that the Restrictionists were getting into power in Missouri, and that the majority of the people were now in their favor. Various information has given intelligence of their infernal work, and there rests not a doubt but that Missouri is largely indebted to it for all the humiliation to which she has been subjected this winter.

A MISSOURIAN."

To Missourians the hero of the second Missouri Compromise and of Missouri's triumph over the eastern restrictionists was Henry Clay. To him they justly gave the credit of obtaining the passage of the admission act. His name and deeds were toasted and lauded in speech and verse throughout the State.

Closely related to the joy of Missourians in their triumph over the East was their appreciation of the emptiness of the fundamental solemn-public-act condition contained in the Missouri resolution of Congress. As one Missouri writer succinctly expressed himself: "the result of the act of Congress appears to be absurd in the extreme. Our legislature is called upon to annihilate a particular clause in our constitution, or pass a law that will be tantamount to such annihilation . . . . They [Congress] require the legislature to do that which, under the constitution, they have not the right to exercise."[1] The same writer continued: "the legislature may enact a law declaring no law passed in conformity to the clause aforesaid [the free negro and mulatto clause] in the state constitution shall be binding; but . . . . It would be a mere *legislative act, subject to be repealed* by the next succeeding legislature . . . . [after the President has admitted Missouri] The State will then be a member of the Union—the legislature of the succeeding session may repeal *the law* so enacted under the requisition of Congress, and we may be precisely in the same situation as it we had been

[1] *Mo. Gaz.*, April 4, 1821, article by "Philo."

admitted without so much ceremony . . . . Upon the whole, I conclude, that the friends of Missouri, have triumphed over their opponents—and they must have seen and known the full bearing of the law that was passed, and knew that we should be admitted *without*, in fact, *any restriction*, though seemingly otherwise." [3] The editor of the *St. Louis Enquirer* commented in a similar strain on the emptiness of the solemn-public-act condition: "Now if there be anything in the constitution of Missouri incompatible with the rights of citizens in other states, how can the *legislature* expunge the inconsistency, or sit in judgment on its constitutionality? . . . . The leaders of the north will now leave Washington with the same feelings which the disappointed ambassadors of the Hartford Convention experienced some five or six years ago." [4]

The inhabitants of Missouri were not only pleased with their triumph over the East and with the ridiculousness of the solemn-public-act condition, but above all they took pride in their having maintained a consistent position of independent statehood since the adoption of the Missouri constitution of 1820 and the organization of the State government in that year. This position had been repeatedly attacked in Congress but was never given up by Missouri and her representatives. Public opinion in Missouri was unanimous on the point that Missouri was a state, had a state constitution and state government, could not become a territory unless force was used, and that whether admitted or not by Congress she would continue to exercise all the functions of a state except those national duties and privileges that centered in Washington. Not once during the winter of 1820-21 were these principles compromised on the part of Missouri and care was taken that no act of her representatives could be interpreted even by implication as derogatory to these principles. That this attitude finally was impliedly endorsed by Congress was a source of much satisfaction to Missourians.

[3] *Ibid.*, April 18, 1821; cf., *Ibid.*, March 28, 1821, an editorial.
[4] March 24, 1821. See also editorial in *St. Charles Missourian*, Apr. 11, 1821.

The editor of the *St. Louis Enquirer* on April 28, 1821, summarized conditions relating to these contentions as follows:

"The first thing that strikes us in the resolution is, that it now admits by fair, direct and necessary implication, that Missouri is a sovereign and independent state. It admits this by treating with the legislature of the state, as now organized under the state constitution, and admitting its authority to enter into a compact with the general government as fully as any other state could do.

The act to be done by Missouri has nothing in it derogatory to her state sovereignty. She is not required to repeal, expunge, or alter any part of her constitution. She is only requested so to construe her present constitution as not to impair the rights of any citizen of any one of the states. . . . .

The *deferred* admission is unpleasant to our feelings; but really, we see no practical inconvenience resulting from it. The state authorities are in full operation; all their acts are valid; . . . . We say that there can be no doubt about the validity of *all the acts* of the State authorities; and our position is maintained by *principle*, and by *practice*, and by the *admission* of Congress.—

1. By *principle*: because Missouri having had the consent of Congress to become a state government at a certain time and place, and having framed it in the way consented to, became, by that act, a sovereign state, and needs no *second* consent of congress upon the same point.—

2. By *practice*: because almost every new state which has been admitted into the Union, put their state authorities, executive, legislative and judicial, into operation *before* the last form of admission was gone through; all the acts done by them in such intervals have been held valid—and if valid for an interval of one or two months, they are equally so for as many, or any number of years.

3. By the *admission* of Congress: because in the very resolution, now under examination, the sovereign, independent, and federal character of Missouri is recognized by the fact of *treating* with her in those characters.

We perceive some error, as we believe, in the understanding of some of our citizens about this resolution; they speak of it as the act of our enemies, as a thing *imposed* upon us by the *enemies* of Missouri. Such is not the fact. The resolution was not the work of the enemies of Missouri; *they* opposed it, and would rejoice to see it opposed here: but it is the work of the devoted friends of *Missouri* and of the *Union*, brought forward by the zeal and abilities of Henry Clay, and supported in one house or the other by one or more members of every state in the Union, except Ohio."

One of the most interesting side-lights on the struggle in Congress leading up to the Second Missouri Compromise related to the status of Missouri's senators and representatives elected to Congress in 1820. This was also an important question to Missourians of that day. When Senators Barton and Benton, of Missouri, arrived in Washington in November, 1820, they were either denied their seats in the Senate or policy dictated their not demanding seats. Scott, however, whose term as Territorial Delegate from Missouri had not expired if Missouri was still a Territory and who had also been elected in 1820 as Congressman from Missouri State, took his seat in

the House, presented the Missouri constitution to that body, and made several motions. On having been asked in what capacity he so acted, Scott replied "as a member from the state of Missouri." [5] Policy, however, dictated his withdrawal from his seat. Sometime toward the end of the session, probably after the passage of the Missouri resolution, Barton, Benton and Scott, all took their seats in Congress as Senators and Representatives from the State of Missouri.[6] Scott was attacked in Missouri for having acted as a delegate of the Territory of Missouri. The editor of the *St. Louis Enquirer* replied to this charge with warmth.[7]

Scott also replied on May 5th, in a letter dated "State of Missouri, Ste. Genevieve, April 12, 1821:"

Sir:— . . . . I never did act as *delegate*, during the late session of congress. I took my seat in no other capacity than as the *representative from the state of Missouri*. I had seen other members from new states allowed that privilege, before the admission of their state into the Union. . . . . I believed the representative from the state of Missouri entitled to the same privilege, and unhesitatingly took my seat, presented the constitution of the state, and . . . . On being afterwards asked, by what right I made these motions, and in what capacity I acted? I answered, *as a member from the state of Missouri*. My right to act in that capacity being then, for the first time, doubted by some, and not wishing prematurely to bring up the question of our state rights, or embarrass our friends . . . . I instantly withdrew from my seat; . . . . The fact that I maintained the ground that I was a member from the state, and not a delegate, is further proven in this, that congress made a special appropriation for the payment of the *senators and representative* from Missouri, which was quite unnecessary as to me, if I had acted as delegate, which I had the right to do if I had chosen so far to compromit the independence and rights of the state—for I had one session to serve as delegate under my former election.

My having been entered on the journals of congress as the *delegate* from the territory, was not my act, but the act of the officer, who seeing me in my place, and not having official knowledge of Missouri as a state, (the constitution not having been then presented,) entered me down as the delegate;—but in all the calls from the chair . . . . for the delegate from Missouri, ... I never once answered.

It is true that I did present the constitution of the state of Missouri, and move the reference of our land law; these were the only two acts I did in the house during the session, and my reasons for so doing were these—first, I believed I had the right so to do, as a member; and secondly, because I could not get those things done by others. But I am conscious that no portion of my conduct has ever authorized even an inference that I considered or represented Missouri as a territory; nor could any act of mine bear a construction prejudicial to the state pretensions or the state rights of Missouri.

With much respect,
your obedient servant,
JOHN SCOTT."

[5] *St. Louis Enq.*, May 5, 1821, letter of Scott dated April 12, 1821.
[6] *St. Louis Enq.*, March 24, 1821. The *Annals* were silent on this.
[7] April 28, 1821.

Although Barton, Benton and Scott did not sit in this session of Congress until toward the close, they received the same pay for their past year's services that was allowed other Congressmen. In the general appropriation bill for the support of the government, approved March 3, 1821, special mention was made on this point as follows: "For the compensation of the senators and representatives elected by Missouri, six thousand dollars." [8] The other members of Congress were provided for in a lump appropriation clause. Thus while Missouri was not officially regarded by Congress as a State, was not admitted into the Union until August, 1821, and was not allowed representatives in Congress until March, 1821, still her two senators and one representative drew salary from the United States government through act of Congress for over a year prior to August, 1821, i. e. practically from the passage of the Enabling Act in 1820.

Although the Missouri admission act was received with general favor in the State, no haste was advocated except in St. Charles and St. Louis counties in complying with the solemn-public-act condition.[9] In these two counties, however, a demand was made for an extra session of the general assembly and in St. Charles county a petition was circulated by members of the legislature requesting the governor to call such a session at an early date. Rumors circulated that the question of a state bank was back of this demand for immediate statehood in the Union. An article appeared in the *St. Charles Missourian* over the penname "A Constituent" opposing the calling of an extra session in 1821, stating that there was no urgent need for such a session, and declaring that the expense of one, which would reach ten thousand dollars, could ill be borne at that time.[10] However, despite the absence of any general demand for an extra session and the depleted condition of the State treasury, Governor McNair issued the following proclamation:

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[8] *Stat. at Large*, III. 628.
[9] *Mo. Intell.*, May 7, 1821, editorial.
[10] *Mo. Intell.*, May 21, 1821, from the *St. Charles Mo.*

"By The Governor of The State of Missouri

A PROCLAMATION.

Whereas, great and weighty matters, claiming the consideration of the General Assembly of the State of Missouri, form an extraordinary occasion for convening them: I DO, by these presents, appoint, *Monday the fourth day of June next*, for their meeting at the town of St. Charles, the temporary seat of government for this state: Hereby requiring the respective Senators and Representatives then and there to assemble in General Assembly, in order to receive such communications as shall then be made to them, and to consult and determine on such measures as in their wisdom may be deemed meet for the welfare of the state.

In testimony whereof, I have hereunto affixed my private seal, (there being no seal of state yet provided,) Given under my hand at St. Charles, the twentieth day of April, in the year of our Lord one thousand eight hundred and twenty-one, and of the independence of the state of Missouri the first.

A. M'Nair

By the Governor.
Joshua Barton,
Secretary of State." [11]

This proclamation met with a poor reception in the Boone's Lick country. On the day the proclamation was printed in the *Missouri Intelligencer* an editorial appeared in that paper criticizing the calling of an extra session. The editor stated that he was not informed what the "great and weighty matters" were that necessitated such quick legislation; that the first intimation and the actual receipt of the proclamation at Franklin, had been almost simultaneous; that no petitions in Howard or the surrounding counties had been circulated; and that as far as he could learn, no demand had been made for such a session except in St. Charles and St. Louis. Public meetings held in western Missouri to consider this question sustained the general attitude taken by the editor of the *Intelligencer*. A large gathering of this kind, which met at Franklin, adopted the following resolutions: first, that a special session was needed but that it should have been called at a time so that it would have merged with the regular fall session; second, that laws interfering with the collection of debts, etc., were unreasonable; third, that the establishment of a state bank then was opposed; fourth, that the general assembly should consider at the special session only the admission act of Congress; and fifth, that these resolutions be sent to the representatives of Howard and Cooper counties and to the governor. In a comment either by the reporter or editor it was stated that these resolutions "are the

[11] *Mo. Intell.*, May 7, 1821.

sentiments of nine tenths of the electors of counties west of Cedar and the river Osage." [12] Notices of other meetings are met with and although the people of Missouri appear to have favored complying with the condition of Congress, there was a widespread feeling that there was plenty of time to do this. There was also a fear of the establishment of a state bank. Combined with this was an unwillingness on the part of many to burden the almost empty treasury with the expense of an extra sitting of the legislature. Notwithstanding these outspoken criticisms of the purpose of Governor McNair's proclamation, the prospect of early admission into the Union was contemplated with much pleasure by the general body of citizens.[13]

In pursuance of the proclamation the general assembly convened at St. Charles on June 4th, and a long message was delivered by Governor McNair.[14] In speaking of the act of Congress, he said: "I deem it proper to recommend the immediate consideration of that subject, and the passage of such legislative act as is required by the resolution; carefully avoiding at the same time, everything that might impair our political rights, or draw in question the dignity and independent character of the state . . . . Our unsettled political condition has already prevented thousands from making our country their home." He called attention to the financial depression of the State and recommended measures be considered to relieve it. He stated that his position was well known on the question of amendments to the constitution and urged action on this subject at the special session. He also referred to the deficit in the State's revenue and suggested that new revenue measures be passed and that retrenchment in government expenses be followed, and for this and other reasons that the session be short.

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[12] *Mo. Intell.*, May 21, 1821. The meeting was held on May 19th.
[13] *Mo. Intell.*, May 21, 28, 1821.
[14] *Mo. Intell.*, June 18, 1821. Henry S. Geyer of St. Louis was elected speaker on the resignation of Mr. Caldwell.

TEMPORARY CAPITOL OF THE STATE OF MISSOURI AT ST. CHARLES.

In use from 1821 to 1826. Courtesy of Hon. Cornelius Roach.

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The resolution of Congress was at once referred to a committee of the whole House on the affairs of the State.[15] Mr. Ball submitted sundry resolutions expressive of the sense of the Committee on the subject, and Messrs. Geyer, Heath and Smith severally submitted bills for the same purpose. After considerable debate Mr. Ball's resolutions were changed into a report. On motion of Mr. Bates the several propositions were referred to a select committee consisting of Bates, Ball, Rutter, Waters of Ste. Genevieve, and Alcorn. This committee reported the Ball report together with the bill submitted by Geyer. The report was a long one containing over twenty-two hundred words. In it were reviewed the history of the objectionable clause in Missouri's constitution and of the resolution of Congress. The report closed with a recommendation to the general assembly to pass "A Solemn Public Act," which act as thus reported was practically identical with the one finally adopted.[16]

The preamble to this act and the act itself were debated in the House, and opposition developed regarding both. Heath and Smith with others attempted to strike out the preamble. McGirk was opposed to acceding to the condition imposed by Congress. The main supporters of the preamble and the bill were Green, Ball, Alcorn, Young and Geyer. In the course of the debate, Geyer "stated a fact not generally known—That the clause mentioned in the Resolution of Congress is not the one concerning free negroes and mulattoes. There are but three principle clauses in the twenty-sixth section of the third article, and the only clause distinguished as a fourth—is the last subordinate branch of the second principal clause and provides that the General Assembly shall have power, to permit the owners of slaves to emancipate them saving the rights of Creditors, where the persons so emancipating will give security that the slave so emancipated will not become a public charge.—But counting the clauses of the twenty-sixth section without reference to the numbers thereto attached and the fourth

[15] *Mo. Intell.*, June 18, 1821. We have been unable to obtain the journal of this session. Our information has been taken from the accounts of proceedings published in the various newspapers of the State.

[16] See *Appendix* IV.

clause, will be that which gives the General Assembly power To prohibit the introduction of any slave for the purpose of speculation, or as an article of trade or merchandise." The bill and preamble were then agreed to by a large majority and reported from the committee of the whole without amendment.[17] In this form it passed the House and was sent to the Senate.

In the latter chamber opposition developed regarding the phraseology of the preamble and several clauses were stricken out, which, however, were not acceded to by the representatives in the lower chamber. A joint conference committee was then appointed by the two houses to confer on the subject. This committee succeeded in reaching an agreement. Their recommended change in the original House bill was unimportant and their report was accepted by both houses. The vote in the House on accepting this report was forty to two, Heath and McGirk opposing. The vote on the final passage of the bill in the House was thirty-six to six. One of the nays, McGirk, entered the following protest: "I do most solemnly protest against any constitutional right which the Congress of the United States had to pass their resolution, approved March 2, 1821, restricting the admission of this free, sovereign, and independent state into the federal Union, and of requiring of the State of Missouri, the condition in said restriction, contained as the price of her admission into the Union. Also against any constitutional right which the Legislature of this State had to pass their most Solemn Public Act, declaring the assent of this State to the fundamental condition in the said resolution of Congress."[18] The Solemn Public Act was approved by Governor McNair on June 26, 1821.[19] Missouri had taken her last step, save one, toward admission into the Union.

Two interesting and important questions arise in considering the resolution of Congress of March 2, 1821, and the solemn public act of Missouri of June 28, 1821. First, how did Congress

[17] *Mo. Gaz.*, June 13, 1821; *Jackson Indep. Patriot*, June 30, 1821.

[18] From all the sources available, it has been impossible for us to determine the final vote on this bill in the Senate.

[19] *Mo. session laws*, special 1821, pp. 9-11; *Mo. Intell.*, July 9, 1821, regarding McGirk's protest; *Jackson Indep. Patriot*, July 7, 1821, on the voting; *St. Louis Enq.*, June 23, 30, on the disagreement of the two houses.

seemingly err in requiring the Missouri legislature to promise never to enforce a certain clause in Missouri's constitution when Congress objected to an entirely different clause: and how did this apparent error remain undiscovered at that time and seemingly was repeated by the Missouri general assembly? Second, were the resolution and the public act binding on Missouri in law and practice? The former will be considered first.

The resolution of Congress of March 2, 1821, in effect imposed on Missouri as the price of admission, a "fundamental condition." This "fundamental condition" stated: "that the fourth clause of the twenty-sixth section of the third article of the constitution submitted on the part of said State to Congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of the States in this Union, shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the constitution of the United States." The resolution continued: "*Provided*, that the Legislature of said State, by a solemn public act, shall declare the assent of the said State to the said fundamental condition" etc.

According to the constitution of Missouri as printed in the Missouri revised statutes of 1825, 1835, 1845, 1855, and also as first printed in St. Louis in 1820 by *I. N. Henry and Company*, the fourth clause of the twenty-sixth section of the third article was not the free negro and mulatto clause, which was the objectionable clause to Congress. One writer was thus led to comment on this seeming blindness or error of Congress as follows: "And, curiously enough, the articles of the Constitution [the Missouri constitution of 1820] enumerated in the act of Congress and in the resolution of the Legislature cannot by any human ingenuity be identified with the clauses excluding free negroes." [20] Professor Viles was not, however, the first to notice this apparent error. The Missouri historian and editor, Lucien Carr, writing in 1900, stated that the fourth clause of the twenty-sixth section of the third article was really

[20] Viles, *The Story of the State*, in *The State of Missouri*, p. 20.

the clause that empowered the legislature to permit owners of slaves to emancipate them, and hence could not possibly bear the construction put upon it.[21] It remained for Professor Hodder to examine in a scholarly and scientific manner this widely circulated story. He was not content with perusing the revised statutes of Missouri but went to the *Senate* and *House Documents* of the second session of the sixteenth Congress, 1820-1821.[22] In these documents, printed in Washington, D. C., he found that the Missouri constitution of 1820 as therein set forth conveniently lent itself to the construction placed upon it by Congress. He found that the free negro and mulatto and mulatto clause was the *fourth indentation in the the margin of section twenty-six of article three*, while as later printed this free negro clause was the first clause under the third subdivision of section twenty-six of article three.[23]

Even more conclusive proof of the accuracy of the designation of the free negro clause by Congress is found in the Missouri constitution of 1820 as printed in Washington, 1820, by the United States Government printers—Gales and Seaton. This latter pamphlet, an original copy of which is now in *The State Historical Society of Missouri*, was the one used by the members of Congress during the 1820-1821 session. In it the free negro clause is the *fourth indentation in the margin of section twenty-six of article three of the Missouri constitution.* The apparent error of Congress becomes an accurate statement of the will and intention of that body. The surprising part of the whole affair is not, Why did Congress fail to notice its error (?)! but is, Why did it take nearly nine decades to discover that Congress had accurately stated what that body had intended to state!

Although Congress had accurately designated the free negro and mulatto clause according to the Washington edition of the Missouri constitution, such designation was not applicable to the St. Louis edition or to the Missouri newspaper reprints of that document.[24] It seems strange that the people

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[21] Carr, *An Error in Resol. of Cong. Admitting Mo. into the Union*, p. 7, reprinted from the *Mass. Hist. Soc. Proceed.*, (2nd ser. vol. XIII) Feb. 1900.

[22] *Senate Doc.* 1 and *House Doc.* 2.

[23] Hodder, *Side Lights on Mo. Comp.*, in *Mo. Hist. Review*, V. 148f.

[24] Cf., Mo. const. as printed in *Mo. Intell.*, July 22, 1820.

of Missouri did not notice this latter discrepancy especially in view of the fact that the local newspapers had printed in full the Missouri constitution, the proceedings of Congress on the Missouri question; the report of the select committee of Congress, and the resolution of March 2, 1821. However, in no article, letter or editorial, that we have read, did there appear the slightest intimation of such an error before June 13th.[25] Until evidence to the contrary has been produced, we assert that all indirect proof points to the ignorance of the people of Missouri regarding this error prior to June, 1821. Although this ignorance or absence of observation of Missourians seems strange, it is by no means inexcusable. The newspaper editions of the constitution had appeared nearly a year before and by 1821 were probably largely destroyed and the official edition had been a small one in numbers: both editions were thus inaccessible to perhaps ninety per cent. of the inhabitants. Further, it had become nation-wide information by March 2, 1821, that Congress objected only to the free negro and mulatto clause in Missouri's constitution. Those familiar with Missouri's constitution knew that this clause was in the twenty-sixth section of the third article. The resolution of March 2, 1821, by designating the fourth clause of this section as the objectionable clause did not, thereby, designate anything that would have stimulated examination by the average man. This natural, though perhaps uncritical, attitude was doubtless unconsciously strengthened by the logical absence of any criticism emanating from the statesmen at Washington on this point. The question at issue in Missouri was not: What does the resolution of Congress object to in our constitution? but was: Shall we conform to the resolution, and if so, are we bound by such conformity?

When the resolution of Congress was considered by the general assembly of Missouri, there was opposition to passing the solemn public act. It is impossible to say accurately how strong was this opposition. Some objected to the wording of the solemn public act, others to the entire condition imposed

[25] All the newspapers published in Missouri at this time were consulted. There were, however, a number of missing issues in the various files.

by Congress. At this juncture Henry S. Geyer, Speaker of the House, later United States Senator from Missouri, in a speech advocating the passage of the solemn public act, pointed out that the clause in the Missouri constitution designated by Congress was not the free negro and mulatto clause to which that body objected. The *Missouri Gazette* of June 13, 1821, stated that this error was "a fact not generally known." Following this revelation by Geyer, the solemn public act passed by a large majority. In a letter written May 23, 1892, by Judge Samuel Treat, St. Louis, to Mr. Carr, it was stated that the solemn public act was drawn up by Henry S. Geyer, who had told him "that the strange mis-recital was observed by the General Assembly and that it aided materially in securing the passage of the act." [26] Professor Hodder did not believe that the legislature was so informed, but this position is proven absolutely untenable as shown by the proceedings of the legislature as given in the *Missouri Gazette* of June 13, 1821. Not only was the Missouri general assembly aware of the seeming error made by Congress, and was thereby more strongly induced to accede to the condition imposed by Congress, but it is almost certain that after June 13, 1821, the people of Missouri were also aware of this error. Before the delivery of Geyer's speech, however, there was no hint given in any newspaper that this error had been noticed. To Henry S. Geyer must be given the honor of first detecting the misstatement by Congress, of being the author of the solemn public act of Missouri, and of being the principal advocate in the passage of that act.

The binding force of the solemn public act in constitutional law was operative only to the extent of charging the President of the United States to admit Missouri in pursuance of the resolution of Congress of March 2, 1821. Legally it was no binding obligation on Missouri. The general assembly of the State could amend the constitution acting only in a definite manner. The condition imposed by Congress was really an attempt to amend the Missouri constitution, but curiously, such an amendment was to be made by ordinary legislative process and not accord-

[26] Carr, *Error*, etc., p. 8.

ing to the amending clauses of the Missouri constitution. The general assembly of Missouri acting in an ordinary manner did not have the power to amend the constitution, and, as it was the creature of the constitution, it could act only as that document prescribed.

The moral force behind the solemn public act was, however, obvious and it was not until 1847 that a Missouri legislature openly violated it. In that year it was enacted: "No free negro or mulatto shall, under any pretext, emigrate to this State, from any other State or Territory." [27] The command placed by the constitution of 1820 in section twenty-six of article three on the Missouri general assembly had finally been obeyed despite the resolution of Congress of March 2, 1821, and the solemn public act of Missouri of June 28, 1821.

The general assembly did not confine its activity to passing the solemn public act at this session. A number of laws were enacted, of which some were of importance. Acts were passed for the relief of debtors and creditors, for the establishment of loan offices—an expensive experiment— for the government of the militia, for the regulation of courts and judicial procedure and for the abolishment of imprisonment for debt in certain cases, and for further providing for the permanent seat of government. A remarkable law was enacted lowering the compensation of the members of the general assembly to three dollars a day and of the president of the senate and the speaker of the house to $4.50 a day each, but providing for the same compensation of the two chief clerks, five dollars a day, as had been previously set.[28] The appropriation bill for this session carried eight thousand dollars for the legislators' salaries and mileage, nine hundred and five dollars for printing, $220.08¾ for miscellaneous expenses, and three hundred dollars for the

[27] *Mo. R. S.*, 1855, II. 1101. Law passed Feb. 16, 1847. The statement made by Professor Hodder that in 1825 the Missouri legislature passed an act excluding negroes and mulattoes "from the State unless citizens of another State, in which case they were required to prove their citizenship by presenting naturalization papers," is not accurate. Naturalization papers were not mentioned in this act. (*Mo. R. S.*, 1825, pp. 600f.) Such persons were required to produce a certificate, attested by the seal of some court of record in some one of the United States, evidencing that he was a citizen of such State. *Cf.*, *Mo. R. S.*, 1835, pp. 414ff; *Mo. R. S.*, 1845, pp. 755ff.

[28] *Mo. Laws*, 1st G. A., special sess., pp. 20f.

inception of the loan office experiment—a total of $9,425.08¾.[29] Several special or private laws were also enacted. The resolutions passed and approved related to defining the southern boundary of the State, to the selection of the United States land wherein to locate the permanent seat of government, to the transmission by the Governor of a copy of the solemn public act to the President of the United States and to each member of Congress, and to a memorial to Congress respecting lead mines.

Ten amendments were proposed to the Missouri constitution at this session. The first abolished the office of Chancellor and gave chancery jurisdiction to the Supreme Court and the Circuit Courts. The second vested law and equity jurisdiction in these latter courts but gave the general assembly power to establish courts of chancery. The third made the tenure of supreme and circuit court judges elective by a joint vote of both houses of the legislature. The fourth gave the general assembly power to fix the compensation of these judges and of the chancellor. The fifth made the same provision in regard to the governor's salary except that it could not be diminished during his term. The sixth disqualified United States salaried officials, while holding office, from holding a salaried State office. The seventh made the tenure of the auditor, secretary of state and attorney general, elective by a joint vote of both houses of the legislature. The eighth repealed the two thousand dollars salary clause for the governor that was in the constitution. The ninth repealed the two thousand dollars salary clause for judges. The tenth vacated the higher state judicial offices at the end of the first session of the next general assembly provided their successors had been elected and qualified.[30] At the first session of the second general assembly of Missouri held in November-December, 1822, seven of these proposed amendments were adopted and became part of the constitution. These were the first, second, fourth, sixth, eighth, ninth and tenth of the foregoing enumerated.[31]

During the special session in June, 1821, an attempt was made to bring up the question of a state bank. Several peti-

[29] *Ibid.*, pp. 27f.
[30] *Ibid.*, pp. 38f.
[31] *Mo. Laws*, 2nd G. A., 1st sess., pp. 146f.

tions and resolutions were presented from the inhabitants of St. Louis county requesting the establishment of a state bank and a bill was reported by Mr. Ball from a select committee favoring such a proposition. This bill was, however, ordered indefinitely postponed by a vote of twenty-four to seventeen.[32] After this vote had been taken a petition was presented from Montgomery county, praying that no state bank be established. Petitions from Howard, Cooper and Chariton counties relating to this subject were also presented, but these were conflicting in their purposes.[33] There was, however, no determined demand for a state bank and there was a widespread opposition to such an institution. The unfortunate experiences of other states with such affairs were strong arguments against Missouri venturing into this field and it was not until 1837 that Missouri took this step.

The legislative activity of the June, 1821, session of the Missouri general assembly seems to have met with little criticism and was regarded as generally good. The *Jackson Independent Patriot* of July 7, 1821, did not favor the act for the relief of debtors and creditors, and thought that this act worked a hardship on the honest creditor. Public opinion supported the loan office law and was practically unanimous in favoring the solemn public act. Fourth of July celebrations were held in different parts of the State at which toasts were drunk in honor of Missouri and her potential admission.[34] Representative of these were the toasts drunk at a "Dinner given by the Young Men of St. Louis at Bennett's Mansion House. Wm. V. Rector, presided." Following were some of the latter:

"The President's Proclamation for the admission of Missouri—'If it were done, when 'tis done, then t'were well it were done quickly."

"The People of Missouri—Willing to contend for their just rights with moderation: ready to defend them at the point of the bayonet."

"The American Senate—They are not to be intimidated by the threats of Brennus or the machinations of Cataline." [35]

The long longed for proclamation of President Monroe was issued on August 10, 1821. In it were recited the joint

[32] *Jackson (Mo.) Independent Patriot*, July 7, 1821.
[33] *Ibid.*
[34] *St. Louis Enq.*, July 7, 21, 1821.
[35] *St. Louis Enq.*, July 7, 1821.

resolution of Congress of March 2nd, and that part of Missouri's solemn public act which agreed to the condition imposed by Congress. It stated that in pursuance of the former resolution, the authority therein vested in the president, and the compliance of the Missouri general assembly with the condition imposed, the President declared "the admission of the said State of Missouri into this Union is declared to be complete." [36]

Missouri's Struggle for Statehood ended in legal parlance on August 10, 1821. Few states have had greater difficulties in reaching this goal. No state has had abler public men working for her interests. And no people has conducted itself more temperately in the face of frequently insulting circumstances drawn out over years, than the state founders of Missouri from 1804 to 1821.

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[36] *R. S. of Mo.*, 1825, pp. 69f; *Richardson*, II. 95f.

APPENDIX I.

MEMORIAL.

OF THE CITIZENS OF MISSOURI TERRITORY.

To the honourable the Senate and the House of Representatives, of the United States of America, in Congress Assembled,

The Petition of the undersigned inhabitants of the Territory of Missouri respectfully showeth:

That your petitioners live within that part of the Territory of Missouri which lies between the latitudes 36 degrees 30 minutes, & 40 degrees North, and between the Mississippi river to the East and the Osage boundary line to the West. They pray that they may be admitted into the Union of the states within these limits.

They conceive that their numbers entitle them to the benefits and to the rank of a state government. Taking the progressive increase during former years, as the basis of the calculation, they estimate their present numbers at upwards of 40,000 souls. Tennessee, Ohio, and the Mississippi state were admitted with smaller numbers, and the treaty of cession guarantees this great privilege to your petitioners as soon as it can be granted under the principles of the Federal Constitution. They have passed eight years in the first grade of territorial government, five in the second; they have evinced their attachment to the honour and integrity of the Union during the late war, and they, with deference, urge their right to become a member of the great Republick.

They forbear to dilate upon the evils of the territorial government, but will barely name, among the grievances of this condition—

1. That they have no vote in your honourable body, and yet are subject to the indirect taxes imposed by you.

2. That the *veto* of the territorial executive is absolute upon the acts of the territorial legislature.

3. That the superior court is constructed on principles unheard of in any other system of jurisprudence, having primary cognizance of almost every controversy, civil and criminal, and subject to correction by no other tribunal!!!

4. That the powers of the territorial legislature are limited in the passage of laws of a local nature, owing to the paramount authority of Congress to legislate upon the same subject.

The boundaries which they solicit for the future state, they believe to be the most reasonable and proper that can be devised. The southern limit will be an extension of the line that divides Virginia and North Carolina, Tennessee and Kentucky. The northern will correspond nearly with the north limit of the territory of Illinois and with the Indian boundary line, near the mouth of the River Des Moines. A front of three and a half degrees upon the Mississippi will be left to the South, to form the territory of Arkansas, with the River Arkansas traversing its centre. A front of three & a half degrees more, upon a medium depth of 200 miles, with the Missouri River in the centre, will form the State of Missouri. Another front of equal extent, embracing the great River St. Pierre, will remain above, to form another state, at some future day.

The boundaries, as solicited, will include all the country to the north and west to which the Indian title has been extinguished.

They will include the body of the population.

They will make the Missouri River the *centre*, and not the *boundary* of the state.

Your petitioners deprecate the idea of making the *civil* divisions of the states to correspond with the *natural* divisions of the country. Such divisions will promote that tendency to separate, which it is the policy of the Union to counteract.

The above described boundaries are adapted to the localities of the country.

The woodland districts are found towards the great rivers. The interior is composed of vast regions of naked and sterile plains, stretching to the Shining Mountains. The states must have large fronts upon the Mississippi, to prevent themselves from being carried into these deserts.—

Besides, the country north & south of the Missouri is necessary each to the other, the former possessing a rich soil destitute of minerals, the latter abounding in mines of lead and iron, and thinly sprinkled with spots of ground fit for cultivation.

Your petitioners hope that their voice may have some weight in the division of their own country, and in the formation of their state boundaries; and that statesmen, ignorant of its localities, may not undertake to cut up their territory with fanciful divisions which may look handsome on paper, but must be ruinous in effect.

And your petitioners will pray, &c.

S. Hall, Printer, St. Louis. [1817.]

APPENDIX II.

MEMORIAL AND RESOLUTIONS of The Legislature of THE MISSOURI TERRITORY, and A Copy Of The Census of the fall of 1817: Amounting To 19,218 Males. December 8, 1819. Referred to a Select Committee. Washington: Printed by Gales & Seaton. 1819.

To the Honorable the Senate, and House of Representatives of the United States of America, in Congress assembled:

The Memorial of the Legislative Council, and House of Representatives, of the Territory of Missouri, in the name and behalf of the people of said Territory, respectfully sheweth,

That their Territory contains at present a population little short of one hundred thousand souls, which is daily increasing, with a rapidity almost unexampled; that their territorial limits are too extensive to admit of a convenient, proper, and equal administration of government; and that the present interest and accommodation, as well as the future growth and prosperity of their country, will be greatly promoted by the following division, which your memorialists propose, to the end that the people may be authorized by law to form a constitution, and establish a state government, within the following limits:

Beginning at a point in the middle of the main channel of the Mississippi river, at the thirty-sixth degree of north latitude, and running thence, in a direct line, to the mouth of Big Black river (a branch of White river) thence, up the main branch of White river, in the middle of the main channel thereof, to where the parallel of thirty-six degrees, thirty minutes, north latitude, crosses the same; thence, with that parallel of latitude, due west, to a point, from which a due north line will cross the Missouri river, at the mouth of Wolf river; thence, due north, to a point due west of the mouth of Rock river, thence, due east, to the middle of the main channel of the river Mississippi, in the middle of the main channel thereof, to the place of beginning.

These are limits which, to a superficial observer, glancing over the chart of our country, would seem a little unreasonable and extravagant; but which, a slight attention to its geography (or more properly to its topography) will be sufficient to satisfy your honorable body, are not only proper, but necessary: The districts of country that are fertile, and susceptible of settlement, are small, and are detached and separated from each other, at great distances, by immense plains and barren tracts, which must for ages remain waste and uninhabited. These distant frontier settlements, thus insulated, must ever be weak and powerless in themselves; and can only become important and respectable, by being united; and one of the great objects your memorialists have in view, is the formation of an effectual barrier for the future against Indian incursions, by pushing forward, and fostering a strong settlement on the little river Plate, to the west, and on the Des Moines, to the north.

Your memorialists are free to declare, and are happy in declaring, that they do not feel the necessity of enforcing their wishes by an elaborate detail of the blessings of self-government, or a particular enumeration of the rights and immunities guarantied to them by the treaty of cession. Your memorialists feel a firm confidence, founded on the wise and generous policy heretofore pursued by your honorable body (and to which they owe their existence as a portion of the great American family) that they need only pray to be incorporated in the Union, and to show that it is not only "possible," but convenient and proper (according to the principles of the Federal Constitution) to have their prayer answered.

There are many grievances of which your memorialists might complain, and complain heavily too, and many that are much more easily felt than described, yet most of them, it must be confessed, are inseparable from the form of government under which they live, and none of them have been imposed, through choice, by the general government. And your memorialists can feel no wish or motive now to complain of old grievances they have long borne with patiently; cheered with the hope that their sufferings must soon have an end, they would choose rather to forget them. There are, however, rights, privileges,

and immunities, belonging to citizens of the United States, which your memorialists would proudly claim, to which they aspire, and with which they pray to be invested: These, they fondly believe, should not and will not now be regarded by your honorable body as mere matters of grace and favor.

And though the enclosed documents are not so satisfactory as your memorialists would wish to have forwarded, they may still serve to shew you that the population included within the counties of New Madrid, Lawrence, St. Genevieve, Cape Girardeau, Washington, St. Louis, St. Charles, and Howard, (which are within the above limits) are more than equal to the number of inhabitants heretofore required by the laws and constitution of the United States upon the admission of any new state into the union; and that, whilst every thing is hoped for, from the spirit of a generous and enlightened policy, much might have been claimed, in justice, on the faith of the treaty of cession.

DAVID BARTON,
Speaker of the House of Representatives.
BENJAMIN EMMONS,
President of the Legislative Council.

St. Louis, 22d November, 1818.

The foregoing is a true copy of the original.

D. BARTON,
Speaker of the House of Representatives.

Resolved, by the Legislative Council, and House of Representatives of the Territory of Missouri, That the Delegate representing this Territory in Congress be requested to use his exertions to procure the passage of a law, to authorize the people of this Territory, within the limits prayed for, in the memorial of the Legislative Council, and House of Representatives, passed the thirteenth day of November instant, (or such other limits, as nearly as possible to those prayed for, as Congress will grant,) to form a constitution and state government, and to provide for their admission into The Union, on an equal footing with the original states.

Resolved, That the Delegate representing this Territory, as aforesaid, be further requested to use his exertions to procure,

in the said proposed state, the following donations and appropriations, to wit:

1st. Lead mines, with one section of land adjoining to each, and salt springs, with four sections of land adjoining each, to be leased for the use of the state.

2d. One township of land for the support of a college.

3d. One township of land, to be disposed of as the legislature of the state shall direct, for the purpose of raising a fund for erecting state buildings, at the permanent seat of government.

4th. All vacant lots and pieces of ground, in towns or villages, for the use of the towns or villages in which they lie, for the support of schools.

5th. The sum of nine per centum, on the amount of all sales of public land, within the limits of the said proposed state, to be expended, under the direction of Congress, for the objects, and in the manner following, that is to say; one per centum thereof for perfecting the water communications between the Mississippi and lake Michigan, by the Illinois and Ouisconsin rivers. Six per centum thereof, for continuing the national western turnpike road, from Wheeling, on the Ohio, to Saint Louis; and two per centum thereof for opening a road direct from Saint Louis to New Orleans.

6th. The sum of five per centum on the amount of the same sales to be appropriated and expended under the direction of the state legislature, as follow, to wit: two per centum for the support of schools in the State, and three per centum for opening roads and canals, and building bridges, within the State.

Resolved, That the Speaker of the House of Representatives of this Territory be, and he is hereby, requested to forward to the delegate representing this Territory in Congress, one copy of the above resolutions, and also one copy of the memorial of the legislative council and house of representatives to Congress on the subject of a state government. And, also, to forward

one copy of said memorial to the Speaker of the House of Representatives in Congress.

DAVID BARTON,
Speaker of the House of Representatives.
THOMAS F. RIDDICK,
President of the Legislative Council, pro tem.

The foregoing is a true copy of the original.

DAVID BARTON,
Speaker of the House of Representatives.

St. Louis, 22d November, 1818.

Copy of the enumeration of the Missouri Territory, under the act of 1st February, 1817, and which was taken and returned in the fall of 1817 to the Governor of the Territory, as transmitted to me by the Speaker of the House of Representatives.

Howard County.....		3,386	6	Reps.....	Fractions,	386
St. Charles	do....	2,866	5	do.	do.	366
St. Louis	do.....	4,725	9	do.	do.	225
St. Genevieve	do....	2,205	4	do.	do.	205
Washington	do....	1,245	2	do.	do.	245
Cape Girardeau	do....	2,593	5	do.	do.	93
New Madrid	do....	669	1	do.	do.	169
Lawrence	do....	1,529	3	do.	do.	29
Arkansas	do.	no return	1			
		19,218	36			

The census was taken in August and September, 1817, and is the male population only, independent of the females and blacks; to which is to be now added the internal increase and emigration ever since.

JOHN SCOTT.

(Author's Note:—The memorial above mentions documents that were entered with it. The author has never seen these documents in any form. They would, undoubtedly, throw much light on the condition of the territory at this time and it is to be greatly regretted that they have not been preserved. It is possible that the documents referred to were the six resolutions adopted by the legislature and very probably another was an extract of the census taken in the summer of 1817,—both of which are copied above. It should also be noted that in the introduction to the resolution, the statement is made that the memorial was "passed the thirteenth day of November instant." The authentication of these documents was made by Barton on the 22nd of November.)

APPENDIX III.

MISSOURI CONSTITUTION OF 1820.

(Note: Copied from the Washington, D. C., edition, 1820.)

We, the people of Missouri, inhabiting the limits hereinafter designated, by our representatives in convention assembled, at St. Louis, on Monday, the 12th day of June, 1820, do mutually agree to form and establish a free and independent republic, by the name of "The State of Missouri," and for the government thereof do ordain and establish this constitution.

ARTICLE I. OF BOUNDARIES.

We do declare, establish, ratify, and confirm the following as the permanent boundaries of said state, that is to say: "Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence, west, along the said parallel of latitude, to the St. Francois river; thence, up, and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude of thirty-six degrees and thirty minutes; thence, west, along the same, to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river; thence, from the point aforesaid, north, along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line correspond with the Indian boundary line; thence, east, from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence, down, and along the middle of the main channel of the said river Des Moines, to the mouth of the same, where it empties into the Mississippi river; thence, due east, to the middle of the main channel of the Mississippi river; thence, down, and following the course of the Mississippi river, in the middle of the main channel thereof, to the place of beginning."

ARTICLE II. OF THE DISTRIBUTION OF POWERS.

The powers of government shall be divided into three distinct departments, each of which shall be confided to a separate magistracy; and no person charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE III. OF THE LEGISLATIVE POWER.

Sec. 1. The legislative power shall be vested in a "General Assembly," which shall consist of a "Senate," and a "House of Representatives."

Sec. 2. The house of representatives shall consist of members to be chosen every second year, by the qualified electors of the several counties. Each county shall have at least one representative, but the whole number of representatives shall never exceed one hundred.

Sec. 3. No person shall be a member of the house of representatives who shall not have attained to the age of twenty-four years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state two years, and of the county which he represents, one year, next before his election, if such county shall have been so long established, but, if not, than of the county or counties from which the same shall have been taken; and who shall not, moreover, have paid a state or county tax.

Sec. 4. The general assembly, at their first session, and in the years one thousand eight hundred and twenty-two, and one thousand eight hundred and twenty-four, respectively, and every fourth year thereafter, shall cause an enumeration of the inhabitants of this state to be made; and, at the first session after each enumeration, shall apportion the number of representatives among the several counties, according to the number of free white male inhabitants therein.

Sec. 5. The senators shall be chosen by the qualified electors for the term of four years. No person shall be a senator

who shall not have attained to the age of thirty years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state four years, and of the district which he may be chosen to represent, one year, next before his election, if such district shall have been so long established, but, if not, then of the district or districts from which the same shall have been taken; and, who shall not, moreover, have paid a state or county tax.

Sec. 6. The senate shall consist of not less than fourteen, nor more than thirty-three members; for the election of whom the state shall be divided into convenient districts, which may be altered from time to time, and new districts established, as public convenience may require; and the senators shall be apportioned among the several districts according to the number of free white male inhabitants in each; provided, that when a senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district, and no county shall be divided in forming a district.

Sec. 7. At the first session of the general assembly the senators shall be divided by lot, as equally as may be, into two classes. The seats of the first class shall be vacated at the end of the second year, and the seats of the second class at the end of the fourth year, so that one-half of the senators shall be chosen every second year.

Sec. 8. After the first day of January, one thousand eight hundred and twenty-two, all general elections shall commence on the first Monday in August, and shall be held biennially; and the electors, in all cases, except of treason, felony, or breach of the peace, shall be privileged from arrest during their continuance at elections, and in going to, and returning from, the same.

Sec. 9. The governor shall issue writs of election to fill such vacancies as may occur in either house of the general assembly.

Sec. 10. Every free white male citizen of the United States, who shall have attained to the age of twenty-one years, and who shall have resided in this state one year before an elec-

tion, the last three months whereof shall have been in the county, or district, in which he offers to vote, shall be deemed a qualified elector of all elective offices; provided, that no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to vote at any election in this state.

Sec. 11. No judge of any court of law or equity, secretary of state, attorney general, state auditor, state or county treasurer, register, or recorder, clerk of any court of record, sheriff, coroner, member of Congress, nor other person holding any lucrative office under the United States, or this State, militia officers, justices of the peace, and post-masters excepted, shall be eligible to either house of the general assembly.

Sec. 12. No person who now is, or who hereafter may be, a collector or holder of public money, nor any assistant or deputy of such collector or holder of public money, shall be eligible to either house of the general assembly, nor to any office of profit or trust, until he sahll [shall] have accounted for and paid all sums for which he may be accountable.

Sec. 13. No person while he continues to exercise the functions of a bishop, priest, clergymen, or teacher of any religious persuasion, denomination, society, or sect, whatsoever, shall be eligible to either house of the general assembly; nor shall he be appointed to any office of profit within the state, the office of justice of the peace excepted.

Sec. 14. The general assembly shall have power to exclude from every office of honor, trust, or profit, within this state, and from the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime.

Sec. 15. Every person who shall be convicted of having, directly or indirectly, given or offered any bribe to procure his election or appointment, shall be disqualified for any office of honor, trust, or profit, under this state; and any person who shall give or offer any bribe to procure the election or appointment of any other person, shall, on conviction thereof, be disqualified for an elector, or for any office of honor, trust, or profit, under this state, for ten years after such conviction.

Sec. 16. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased, during his continuance in office, except to such offices as shall be filled by elections of the people.

Sec. 17. Each house shall appoint its own officers, and shall judge of the qualifications, elections, and returns, of its own members. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as such house may provide.

Sec. 18. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds of all the members elected, expel a member, but no member shall be expelled a second time for the same cause. They shall each, from time to time, publish a journal of their proceedings, except such parts as may in their opinion require secrecy; and the yeas and nays on any question shall be entered on the journal at the desire of any two members.

Sec. 19. The doors of each house, and of committees of the whole, shall be kept open, except in cases which may require secrecy; and each house may punish, by fine or imprisonment, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in their presence, during their session; provided, that such fine shall not exceed three hundred dollars, and such imprisonment shall not exceed forty-eight hours for one offence.

Sec. 20. Neither house shall, without the consent of the other, adjourn for more than two days at any one time, nor to any other place than to that in which the two houses may be sitting.

Sec. 21. Bills may originate in either house, and may be altered, amended, or rejected, by the other; and every bill shall be read on three different days in each house, unless two-thirds of the house where the same is depending shall dispense with this rule; and every bill, having passed both houses, shall be

signed by the speaker of the house of representatives, and by the president of the senate.

Sec. 22. When any officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by separate vote of either house of the general assembly, the votes shall be publicly given viva voce, and entered on the journals. The whole list of the members shall be called, and the names of absentees shall be noted and published with the journal.

Sec. 23. Senators and representatives shall, in all cases, except of treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and for fifteen days next before the commencement and after the termination of each session; and for any speech or debate in either house they shall not be questioned in any other place.

Sec. 24. The members of the general assembly shall severally receive from the public treasury a compensation for their services, which may, from time to time, be increased or diminished by law; but no alteration increasing or tending to increase the compensation of members, shall take effect during the session at which such alterations shall be made.

Sec. 25. The general assembly shall direct, by law, in what manner, and in what courts, suits may be brought against the state.

Sec. 26. The general assembly shall have no power to pass laws; First, For the emancipation of slaves without the consent of their owners, or without paying them, before such emancipation, a full equivalent for such slaves so emancipated; and, Second, To prevent bona fide emigrants to this state, or actual settlers therein, from bringing from any of the United States, or from any of their territories, such persons as may there be deemed to be slaves, so long as any persons of the same description are allowed to be held as slaves by the laws of this state.

They shall have power to pass laws; First, To prohibit the introduction into this state of any slave who may have committed any high crime in any other state or territory; Second, To prohibit the introduction of any slave for the purpose of speculation, or as an article of trade or merchandise; Third, To

prohibit the introduction of any slave, or the offspring of any slave, who heretofore may have been or who hereafter may be, imported from any foreign country into the United States, or any territory thereof, in contravention of any existing statute of the United States; and, Fourth, To permit the owners of slaves to emancipate them, saving the rights of creditors, where the person so emancipating will give security that the slave so emancipated shall not become a public charge.

It shall be their duty, as soon as may be, to pass such laws as may be necessary.

First, To prevent free negroes and mulattoes from coming to, and settling in, this state, under any pretext whatsoever; and,

Second, To oblige the owners of slaves to treat them with humanity, and to abstain from all injuries to them extending to life or limb.

Sec. 27. In prosecutions for crimes, slaves shall not be deprived of an impartial trial by jury; and a slave convicted of a capital offence shall suffer the same degree of punishment, and no other, that would be inflicted on a free white person for a like offence; and courts of justice before whom slaves shall be tried, shall assign them counsel for their defence.

Sec. 28. Any person who shall maliciously deprive of life or dismember a slave, shall suffer such punishment as would be inflicted for the like offence if it were committed on a free white person.

Sec. 29. The governor, lieutenant governor, secretary of state, auditor, treasurer, attorney general, and all judges of the courts of law and equity, shall be liable to impeachment for any misdemeanor in office; but judgment in such case shall not extend farther than removal from office, and disqualification to hold any office of honor, trust, or profit, under this state. The party impeached, whether convicted or acquitted, shall, nevertheless, be liable to be indicted, tried and punished, according to law.

Sec. 30. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate; and, when sitting for that purpose, the senators

shall be on oath or affirmation to do justice according to law and evidence. When the governor shall be tried, the presiding judge of the supreme court shall preside; and no person shall be convicted without the concurrence of two-thirds of all the senators present.

Sec. 31. A state treasurer shall be biennially appointed by joint vote of the two houses of the general assembly, who shall keep his office at the seat of government. No money shall be drawn from the treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.

Sec. 32. The appointment of all officers, not otherwise directed by this constitution, shall be made in such manner as may be prescribed by law; and all officers, both civil and military, under the authority of this state, shall, before entering on the duties of their respective offices, take an oath or affirmation to support the constitution of the United States, and of this State, and to demean themselves faithfully in office.

Sec. 33. The general assembly shall meet on the third Monday in September next; on the first Monday in November, eighteen hundred and twenty-one; on the first Monday in November, eighteen hundred and twenty-two; and thereafter the general assembly shall meet once in every two years, and such meeting shall be on the first Monday in November, unless a different day shall be appointed by law.

Sec. 34. No county now established by law shall ever be reduced, by the establishment of new counties, to less than twenty miles square; nor shall any county hereafter be established which shall contain less than four hundred square miles.

Sec. 35. Within five years after the adoption of this constitution, all the statute laws of a general nature, both civil and criminal, shall be revised, digested, and promulgated, in such manner as the general assembly shall direct, and a like revision, digest, and promulgation, shall be made at the expiration of every subsequent period of ten years.

Sec. 36. The style of the laws of this state shall be—"Be it enacted by the general assembly of the state of Missouri."

ARTICLE IV. OF THE EXECUTIVE POWER.

Sec. 1. The supreme executive power shall be vested in a chief magistrate, who shall be styled "The Governor of the state of Missouri."

Sec. 2. The governor shall be at least thirty-five years of age, and a natural born citizen of the United States, or a citizen at the adoption of the constitution of the United States, or an inhabitant of that part of Louisiana now included in the state of Missouri at the time of the cession thereof from France to the United States, and shall have been a resident of the same at least four years next before his election.

Sec. 3. The governor shall hold his office for four years, and until a successor be duly appointed and qualified. He shall be elected in the manner following: At the time and place of voting for members of the house of representatives, the qualified electors shall vote for a governor; and when two or more persons have an equal number of votes, and a higher number than any other person, the election shall be decided between them by a joint vote of both houses of the general assembly at their next session.

Sec. 4. The governor shall be ineligible for the next four years after the expiration of his term of service.

Sec. 5. The governor shall be commander in chief of the militia and navy of this state, except when they shall be called into the service of the United States; but he need not command in person, unless advised so to do by a resolution of the general assembly.

Sec. 6. The governor shall have power to remit fines and forfeitures, and, except in cases of impeachment, to grant reprieves and pardons.

Sec. 7. The governor shall, from time to time, give to the general assembly information relative to the state of the government, and shall recommend to their consideration such measures as he shall deem necessary and expedient. On extraordinary occasions he may convene the general assembly by proclamation, and shall state to them the purpose for which they are convened.

Sec. 8. The governor shall take care that the laws be distributed, and faithfully executed; and he shall be a conservator of the peace throughout the state.

Sec. 9. When any office shall become vacant, the governor shall appoint a person to fill such vacancy, who shall continue in office until a successor be duly appointed and qualified according to law.

Sec. 10. Every bill which shall have been passed by both houses of the general assembly, shall, before it becomes a law, be presented to the governor for his approbation. If he approve, he shall sign it; if not, he shall return it, with his objections, to the house in which it shall have originated, and the house shall cause the objections to be entered at large on its journals, and shall proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall be in like manner reconsidered, and, if approved by a majority of all the members elected to that house, it shall become a law. In all such cases the votes of both houses shall be taken by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if the governor had signed it, unless the general assembly, by its adjournment, shall prevent its return, in which case it shall not become a law.

Sec. 11. Every resolution to which the concurrence of the senate and house of representatives may be necessary, except on cases of adjournment, shall be presented to the governor, and, before the same shall take effect, shall be proceeded upon in the same manner as in the case of a bill.

Sec. 12. There shall be an auditor of public accounts, whom the governor, by and with the advice and consent of the senate, shall appoint. He shall continue in office for four years, and shall perform such duties as may be prescribed by law. His office shall be kept at the seat of government.

Sec. 13. The governor shall, at stated times, receive for his services an adequate salary, to be fixed by law, which shall neither be increased or diminished during his continuance in office, and which shall never be less than two thousand dollars annually.

Sec. 14. There shall be a lieutenant governor, who shall be elected at the same time, in the same manner, for the same term, and shall possess the same qualifications, as the governor. The electors shall distinguish for whom they vote as governor, and for whom as lieutenant governor.

Sec. 15. The lieutenant governor shall, by virtue of his office, be president of the senate. In committee of the whole he may debate on all questions; and when there is an equal division, he shall give the casting vote in senate, and also in joint votes of both houses.

Sec. 16. When the office of governor shall become vacant by death, resignation, absence from the state, removal from office, refusal to qualify, impeachment, or otherwise, the lieutenant governor, or in case of like disability on his part, the president of the senate pro tempore, or, if there be no president of the senate pro tempore, the speaker of the house of representatives, shall possess all the powers, and discharge all the duties, of governor, and shall receive for his services the like compensation, until such vacancy be filled, or the governor so absent or impeached shall return or be acquitted.

Sec. 17. Whenever the office of governor shall become vacant, by death, resignation, removal from office, or otherwise, the lieutenant governor, or other person exercising the powers of governor for the time being, shall, as soon as may be, cause an election to be held to fill such vacancy, giving three months' previous notice thereof; and the person elected shall not thereby be rendered ineligible to the office of governor for the next succeeding term. Nevertheless, if such vacancy shall happen within eighteen months of the end of the term for which the late governor shall have been elected, the same shall not be filled.

Sec. 18. The lieutenant governor, or president of the senate pro tempore, while presiding in the senate, shall receive

the same compensation as shall be allowed to the speaker of the house of representatives.

Sec. 19. The returns of all elections of governor and lieutenant governor shall be made to the secretary of state, in such manner as may be prescribed by law.

Sec. 20. Contested elections of governor and lieutenant governor shall be decided by joint vote of both houses of the general assembly, in such manner as may be prescribed by law.

Sec. 21. There shall be a secretary of state, whom the governor, by and with the advice and consent of the senate, shall appoint. He shall hold his office four years, unless sooner removed on impeachment. He shall keep a register of all the official acts and proceedings of the governor, and when necessary shall attest them; and he shall lay the same, together with all papers relative thereto, before either house of the general assembly, whenever required so to do, and shall perform such other duties as may be enjoined on him by law.

Sec. 22. The secretary of state shall, as soon as may be, procure a seal of state, with such emblems and devices as shall be directed by law, which shall not be subject to change. It shall be called the "Great Seal of the State of Missouri," shall be kept by the secretary of state, and all official acts of the governor, his approbation of the laws excepted, shall be thereby authenticated.

Sec. 23. There shall be appointed in each county a sheriff and a coroner, who, until the general assembly shall otherwise provide, shall be elected by the qualified electors at the time and place of electing representatives. They shall serve for two years, and until a successor be duly appointed and qualified, unless sooner removed for misdemeanor in office, and shall be ineligible four years in any period of eight years. The sheriff and coroner shall each give security for the faithful discharge of the duties of his office, in such manner as shall be prescribed by law. Whenever a county shall be hereafter established, the governor shall appoint a sheriff and coroner therein, who shall each continue in office until the next succeeding general election, and until a successor shall be duly qualified.

Sec. 24. When vacancies happen in the office of sheriff or coroner, they shall be filled by appointment of the governor; and the persons so appointed shall continue in office until successors shall be duly qualified, and shall not be thereby rendered ineligible for the next succeeding term.

Sec. 25. In all elections of sheriff and coroner, when two or more persons have an equal number of votes, and a higher number than any other person, the circuit courts of the counties, respectively, shall give the casting vote; and all contested elections for the said offices shall be decided by the circuit courts, respectively, in such manner as the general assembly may by law prescribe.

ARTICLE V. OF THE JUDICIAL POWER.

Sec. 1. The Judicial powers, as to matters of law and equity, shall be vested in a "supreme court," in a "chancellor," in "circuit courts," and in such inferior tribunals as the general assembly may, from time to time, ordain and establish.

Sec. 2. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under the restrictions and limitations in this constitution provided.

Sec. 3. The supreme court shall have a general superintending control over all inferior courts of law. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and other original remedial writs, and to hear and determine the same.

Sec. 4. The supreme court shall consist of three judges, any two of whom shall be a quorum; and the said judges shall be conservators of the peace throughout the state.

Sec. 5. The state shall be divided into convenient districts, not to exceed four, in each of which the supreme court shall hold two sessions annually, at such place as the general assembly shall appoint; and, when sitting in either district, it shall exercise jurisdiction over causes originating in that district only: Provided, however, that the general assembly may, at any time hereafter, direct, by law, that the said court shall be held at one place only.

Sec. 6. The circuit court shall have jurisdiction over all criminal cases which shall not be otherwise provided for by law, and exclusive original jurisdiction in all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly. It shall hold its terms in such place in each county as may be by law directed.

Sec. 7. The state shall be divided into convenient circuits, for each of which a judge shall be appointed, who, after his appointment, shall reside, and be a conservator of the peace, within the circuit for which he shall be appointed.

Sec. 8. The circuit courts shall exercise a superintending control over all such inferior tribunals as the general assembly may establish, and over justices of the peace in each county in their respective circuits.

Sec. 9. The jurisdiction of the court of chancery shall be co-extensive with the state, and the times and places of holding its sessions shall be regulated in the same manner as those of the supreme court.

Sec. 10. The court of chancery shall have original and appellate jurisdiction in all matters of equity, and a general control over executors, administrators, guardians, and minors, subject to appeal, in all cases, to the supreme court, under such limitations as the general assembly may, by law, provide.

Sec. 11. Until the general assembly shall deem it expedient to establish inferior courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the court of chancery, in such manner, and under such restrictions, as shall be prescribed by law.

Sec. 12. Inferior tribunals shall be established in each county for the transaction of all county business; for appointing guardians; for granting letters testamentary, and of administration; and for settling the accounts of executors, administrators, and guardians.

Sec. 13. The governor shall nominate, and, by and with the advice and consent of the senate, appoint, the judges of the supreme court, the judges of the circuit courts, and the chancellor, each of whom shall hold his office during good behavior, and shall receive for his services a compensation, which shall

not be diminished during his continuance in office, and which shall not be less than two thousand dollars annually.

Sec. 14. No person shall be appointed a judge of the supreme court, nor of a circuit court, nor chancellor, before he shall have attained to the age of thirty years; nor shall any person continue to exercise the duties of any of said offices after he shall have attained to the age of sixty-five years.

Sec. 15. The courts, respectively, shall appoint their clerks, who shall hold their offices during good behavior. For any misdemeanor in office they shall be liable to be tried and removed by the supreme court, in such manner as the general assembly shall by law provide.

Sec. 16. Any judge of the supreme court, or of the circuit court, or the chancellor, may be removed from office on the address of two-thirds of each house of the general assembly to the governor for that purpose; but each house shall state, on its respective journal, the cause for which it shall wish the removal of such judge or chancellor, and give him notice thereof; and he shall have the right to be heard in his defence in such manner as the general assembly shall by law direct; but no judge nor chancellor shall be removed in this manner for any cause for which he might have been impeached.

Sec. 17. In each county there shall be appointed as many justices of the peace as the public good may be thought to require. Their powers and duties, and their duration in office, shall be regulated by law.

Sec. 18. An attorney general shall be appointed by the governor, by and with the advice and consent of the senate. He shall remain in office four years, and shall perform such duties as shall be required of him by law.

Sec. 19. All writs and process shall run, and all prosecutions shall be conducted, in the name of the "State of Missouri;" all writs shall be tested by the clerk of the court from which they shall be issued, and all indictments shall conclude, "against the peace and dignity of the state."

ARTICLE VI. OF EDUCATION.

Sec. 1. Schools, and the means of education, shall forever be encouraged in this state; and the general assembly shall take measures to preserve, from waste or damage, such lands as have been, or may hereafter be, granted by the United States for the use of schools within each township in this state, and shall apply the funds, which may arise from such lands, in strict conformity to the object of the grant, and one school, or more, shall be established in each township as soon as practicable and necessary, where the poor shall be taught gratis.

Sec. 2. The general assembly shall take measures for the improvement of such lands as have been, or hereafter may be, granted by the United States to this state for the support of a seminary of learning; and the funds accruing from such lands, by rent or lease, or in any other manner, or which may be obtained from any other source, for the purposes aforesaid, shall be and remain a permanent fund to support a university for the promotion of literature, and of the arts and sciences; and it shall be the duty of the general assembly, as soon as may be, to provide effectual means for the improvement of such lands, and for the improvement and permanent security of the funds and endowments of such institution.

ARTICLE VII. OF INTERNAL IMPROVEMENT.

Internal improvement shall forever be encouraged by the government of this state; and it shall be the duty of the general assembly, as soon as may be, to make provision by law for ascertaining the most proper objects of improvement, in relation both to roads and navigable waters; and it shall also be their duty to provide by law for a systematic and economical application of the funds appropriated to those objects.

ARTICLE VIII. OF BANKS.

The general assembly may incorporate one banking company, and no more, to be in operation at the same time. The bank to be incorporated may have any number of branches, not to exceed five, to be established by law; and not more than

one branch shall be established at any one session of the general assembly. The capital stock of the bank to be incorporated shall never exceed five millions of dollars at least one-half of which shall be reserved for the use of the state.

Article IX. Of the Militia.

Sec. 1. Field officers and company officers shall be elected by the persons subject to militia duty within their respective commands; brigadiers general shall be elected by the field officers of their respective brigades; and majors general by the brigadiers and field officers of their respective divisions, until otherwise directed by law.

Sec. 2. General and field officers shall appoint their officers of the staff.

Sec. 3. The governor shall appoint an adjutant general, and all other militia officers, whose appointments are not otherwise provided for in this constitution.

Article X. Of Miscellaneous Provisions.

Sec. 1. The general assembly of this state shall never interfere with the primary disposal of the soil by the United States, nor with any regulation Congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the property of the United States, nor shall lands belonging to persons residing out of the limits of this state ever be taxed higher than the lands belonging to persons residing within the state.

Sec. 2. The state shall have concurrent jurisdiction on the river Mississippi, and on every other river bordering on the said state, so far as the said river shall form a common boundary to the said state, and any other state or states, now, or hereafter to be, formed and bounded by the same; and the said river Mississippi, and the navigable rivers and waters leading into the same, whether bordering on or within this state, shall be common highways, and forever free to the citizens of this state and of the United States, without any tax, duty, impost, or toll, therefor, imposed by the state.

ARTICLE XI. OF THE PERMANENT SEAT OF GOVERNMENT.

Sec. 1. The general assembly, at their first session, shall appoint five commissioners, for the purpose of selecting a place for the permanent seat of government, whose duty it shall be to select four sections of the land of the United States, which shall not have been exposed to public sale.

Sec. 2. If the commissioners believe the four sections of land so by them to be selected, be not a suitable and proper situation for the permanent seat of government, they shall select such other place as they deem most proper for that purpose, and report the same to the general assembly at the time of making their report, provided for in the first section of this article; provided, that no place shall be selected which is not situated on the bank of the Missouri river, and within forty miles of the mouth of the river Osage.

Sec. 3. If the general assembly determine that the four sections of land, which may be selected by authority of the first section of this article, be a suitable and proper place for the permanent seat of government, the said commissioners shall lay out a town thereon, under the direction of the general assembly; but, if the general assembly deem it most expedient to fix the permanent seat of government at the place to be selected by authority of the second section of this article, they shall so determine, and, in that event, shall authorize the said commissioners to purchase any quantity of land, not exceeding six hundred and forty acres, which may be necessary for the purpose aforesaid; and the place so selected shall be the permanent seat of government of this state, from and after the first day of October, one thousand eight hundred and twenty-six.

Sec. 4. The general assembly, in selecting the above mentioned commissioners, shall choose one from each extreme part of the state, and one from the centre, and it shall require the concurrence of at least three of the commissioners to decide upon any part of the duties assigned them.

ARTICLE XII. MODE OF AMENDING THE CONSTITUTION.

The general assembly may, at any time, propose such amendments to this constitution as two-thirds of each house shall deem expedient, which shall be published in all the newspapers published in this state, three several times, at least twelve months before the next general election; and if, at the first session of the general assembly, after such general election, two-thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes, as parts of this constitution; provided, that such proposed amendments shall be read on three several days, in each house, as well when the same are proposed, as when they are finally ratified.

ARTICLE XIII. DECLARATION OF RIGHTS.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare,

1. That all political power is vested in, and derived from, the people.

2. That the people of this state have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their constitution and form of government, whenever it may be necessary to their safety and happiness.

3. That the people have the right peaceably to assemble for their common good, and to apply to those vested with the powers of government for redress of grievances, by petition or remonstrance; and that their right to bear arms, in defence of themselves and of the state, cannot be questioned.

4. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can be compelled to erect, support, or attend any place of worship, or to maintain any minister of the gospel, or teacher of religion; that no human authority can control or interfere with the rights of conscience; that no person can ever be hurt, molested, or restrained in his religious pro-

fession or sentiments, if he do not disturb others in their religious worship.

5. That no person, on account of his religious opinions, can be rendered ineligible to any office of trust or profit under this state; that no preference can ever be given by law to any sect or mode of worship; and that no religious corporation can ever be established in this state.

6. That all elections shall be free and equal.

7. That courts of justice ought to be open to every person, and certain remedy afforded for every injury to person, property, or character; and that right and justice ought to be administered without sale, denial, or delay; and that no private property ought to be taken or applied to public use without just compensation.

8. That the right of trial by jury shall remain inviolate.

9. That, in all criminal prosecutions, the accused has the right to be heard by himself and his counsel; to demand the nature and cause of accusation; to have compulsory process for witnesses in his favor; to meet the witnesses against him face to face; and, in prosecutions on presentment or indictment, to a speedy trial by an impartial jury of the vicinage; that the accused cannot be compelled to give evidence against himself, nor be deprived of life, liberty, or property, but by the judgment of his peers or the law of the land.

10. That no person, after having been once acquitted by a jury, can, for the same offence, be again put in jeopardy of life or limb, but if, in any criminal prosecution, the jury be divided in opinion at the end of the term, the court before which the trial shall be had, may, in its discretion, discharge the jury, and commit or bail the accused for trial at the next term of such court.

11. That all persons shall be bailable by sufficient sureties, except for capital offences, when the proof is evident or the presumption great, and the privilege of the writ of habeas corpus cannot be suspended, unless when, in case of rebellion or invasion, the public safety may require it.

12. That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

13. That the people ought to be secure in their persons, papers, houses, and effects, from unreasonable searches and seizures; and no warrant to search any place or to seize any person or thing can issue, without describing the place to be searched, or the person or thing to be seized, as nearly as may be, nor without probable cause, supported by oath or affirmation.

14. That no person can, for an indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger, or, by leave of the court, for oppression or misdemeanor in office.

15. That treason against the state can consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; that no person can be convicted of treason unless on the testimony of two witnesses to the same overt act, or on his own confession in open court; that no person can be attainted of treason or felony by the general assembly; that no conviction can work corruption of blood or forfeiture of estate; that the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death; and when any person shall be killed by casualty there ought to be no forfeiture by reason thereof.

16. That the free communication of thoughts and opinions is one of the invaluable rights of man, and that every person may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty. That, in all prosecutions for libels, the truth thereof may be given in evidence, and the jury may determine the law and the facts, under the direction of the court.

17. That no ex-post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, can be passed; nor can the person of a debtor be imprisoned for debt after he shall have surrendered his property for the benefit of his creditors in such manner as may be prescribed by law.

18. That no person who is religiously scrupulous of bearing arms can be compelled to do so, but may be compelled to pay an equivalent for military service in such manner as

shall be prescribed by law; and that no priest, preacher of the gospel, or teacher of any religious persuasion or sect, regularly ordained as such, be subject to militia duty, or compelled to bear arms.

19. That all property subject to taxation in this state shall be taxed in proportion to its value.

20. That no title of nobility, hereditary emolument, privilege, or distinction, shall be granted; nor any office created the duration of which shall be longer than the good behavior of the officer appointed to fill the same.

21. That migration from this state cannot be prohibited.

22. That the military is, and, in all cases, and at all times, shall be, in strict subordination to the civil power; that no soldier can, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in such manner as may be prescribed by law; nor can any appropriation for the support of an army be made for a longer period than two years.

SCHEDULE.

Sec. 1. That no inconvenience may arise from the change of government, we declare, that all writs, actions, prosecutions, judgments, claims, and contracts, of individuals, and of bodies corporate, shall continue as if no change had taken place; and all process which may, before the third Monday in September next, be issued under the authority of the Territory of Missouri, shall be as valid as if issued in the name of the state.

Sec. 2. All laws now in force in the Territory of Missouri, which are not repugnant to this constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the general assembly.

Sec. 3. All fines, penalties, forfeitures, and escheats, accruing to the Territory of Missouri, shall accrue to the use of the state.

Sec. 4. All recognizances heretofore taken, or which may be taken before the third Monday in September next, shall remain valid, and shall pass over to, and may be prosecuted in, the name of the state; and all bonds executed to the governor

of the territory, or to any other officer or court, in his official capacity, shall pass over to the governor, or other proper state authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions, which have arisen, or which may arise before the third Monday in September next, and which shall then be depending, shall be prosecuted to judgment and execution in the name of the state. All actions at law which now are, or which, on the third Monday in September next, may be, depending in any of the courts of record, in the Territory of Missouri, may be commenced in, or transferred to, any court of record of the state which shall have jurisdiction of the subject matter thereof; and all suits in equity may, in like manner, be commenced in, or transferred to, the court of chancery.

Sec. 5. All officers, civil and military, now holding commissions under authority of the United States, or of the territory of Missouri, shall continue to hold and exercise their respective offices until they shall be superceded under the authority of the state; and all such officers holding commissions under the authority of the territory of Missouri, shall receive the same compensation which they have hitherto received, in proportion to the time they shall be so employed.

Sec. 6. The first meeting of the general assembly shall be at St. Louis, with power to adjourn to any other place; and the general assembly, at the first session thereof, shall fix the seat of government until the first day of October, one thousand eight hundred and twenty-six; and the first session of the general assembly shall have power to fix the compensation of the members thereof; any thing in the constitution to the contrary notwithstanding.

Sec. 7. Until the first enumeration shall be made, as directed in this constitution, the county of Howard shall be entitled to eight representatives; the county of Cooper to four representatives; the county of Montgomery to two representatives; the county of Lincoln to one representative; the county of Pike to two representatives; the county of St. Charles to three representatives; the county of St. Louis to six repre-

sentatives; the county of Franklin to two representatives; the county of Jefferson to one representative; the county of Washington to two representatives; the county of Ste. Genevieve to four representatives; the county of Cape Girardeau to four representatives; the county of New Madrid to two representatives; the county of Madison to one representative; the county of Wayne to one representative; and that part of the county of Lawrence situated within this state shall attach to, and form part of, the county of Wayne, until otherwise provided by law, and the sheriff of the county of Wayne shall appoint the judges of the first election, and the place of holding the same, in the part thus attached; and any person who shall have resided within the limits of this state five months previous to the adoption of this constitution, and who shall be otherwise qualified, as prescribed in the third section of the third article thereof, shall be eligible to the house of representatives, any thing in this constitution to the contrary notwithstanding.

Sec. 8. For the first election of senators, the state shall be divided into districts, and the apportionment shall be as follows; that is to say: the counties of Howard and Cooper shall compose one district, and elect four senators; the counties of Montgomery and Franklin shall compose one district, and elect one senator; the county of St. Charles shall compose one district, and elect one senator; the counties of Lincoln and Pike shall compose one district, and elect one senator; the county of St. Louis shall compose one district, and elect two senators; the counties of Washington and Jefferson shall compose one district, and elect one senator; the county of St. Genevieve shall compose one district and elect one senator; the counties of Madison and Wayne shall compose one district, and elect one senator; the counties of Cape Girardeau and New Madrid shall compose one district, and elect two senators; and, in all cases where a senatorial district consists of more than one county, it shall be the duty of the clerk of the county second named in that district to certify the returns of the senatorial election within their proper county to the clerk of the county first named, within five days after he shall have received the same; and any person who shall have resided within the limits of this

state five months previous to the adoption of this constitution, and who shall be otherwise qualified, as prescribed in the fifth section of the third article thereof, shall be eligible to the senate of this state, any thing in this constitution to the contrary notwithstanding.

Sec. 9. The president of the convention shall issue writs of election to the sheriffs of the several counties, (or, in case of vacancy, to the coroners,) requiring them to cause an election to be held, on the fourth Monday in August next, for a governor, a lieutenant governor, a representative in the Congress of the United States for the residue of the sixteenth Congress, a representative for the seventeenth Congress, senators and representatives for the general assembly, sheriffs, and coroners; and the returns of all township elections, held in pursuance thereof, shall be made to the clerk of the proper county, within five days after the day of election; and any person who shall reside within the limits of this state at the time of the adoption of this constitution, and who shall be otherwise qualified, as prescribed in the tenth section of the third article thereof, shall be deemed a qualified elector, any thing in this constitution to the contrary notwithstanding.

Sec. 10. The elections shall be conducted according to the existing laws of the Missouri territory. The clerks of the circuit courts of the several counties shall certify the returns of the election of governor and lieutenant governor, and transmit the same to the speaker of the house of representatives, at the temporary seat of government, in such time that they may be received on the third Monday of September next. As soon as the general assembly shall be organized, the speaker of the house of representatives and the president, pro tempore, of the senate shall, in the presence of both houses, examine the returns, and declare who are duly elected to fill those offices; and, if any two or more persons shall have an equal number of votes, and a higher number than any other person, the general assembly shall determine the election in the manner hereinbefore provided; and the returns of the election for member of Congress shall be made to the secretary of state within thirty days after the day of election.

Sec. 11. The oaths of office, herein directed to be taken, may be administered by any judge or justice of the peace, until the general assembly shall otherwise direct.

Sec. 12. Until a seal of state be provided, the governor may use his private seal.

Done by the representatives of the people of Missouri, in convention assembled, at the town of St. Louis, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and twenty, and of the independence of the United States of America the forty-fifth.

DAVID BARTON, *President of the Convention, and Representative from the County of St. Louis.*

From the County of Cape Girardeau.

Stephen Byrd
Alexander Bucknor [Buckner]
James Evans
Joseph M'Ferron
Richard S. Thomas.

From the County of Cooper.

Robert P. Clark
William Sillard [Lillard]
Robert Wallace.

From the County of Franklin.

John G. Heath.

From the County of Howard.

Nicholas S. Burckhartt
Jonathan Smith Findlay
Duff Green
Benjamin H. Reeves
John Ray.

From the County of Jefferson.

S. Hammond.

From the County of Lincoln.

Malcolm Henry.

From the County of Montgomery.

Jonathan Ramsay
James Talbott.

From the County of Madison.

Nathaniel Cook.

From the County of New Madrid.

Robert D. Dawson
Christo. G. Houts.

From the County of Pike.

Stephen Cleaver.

From the County of St. Charles.

Hiram H. Baber
Benjamin Emmons.
Nathan Boone

From the County of St. Genevieve.

R. T. Brown
H. Dodge.
John D. Cook
John Scott.

From the County of St. Louis.

Edw. Bates
Wm. Rector
Pr. Chouteau, jun.
Thos. F. Riddick
A. M'Nair
John C. Sullivan.
Bernd. Pratte

From the County of Washington.

John Rice Jones
Samuel Perry.
John Hutchings

From the County of Wayne.

Elijah Bettis.

Attest:

WILLIAM G. PETTUS,
Secretary of the Convention.

AN ORDINANCE

Declaring the assent of the people of the State of Missouri, by their representatives, in convention assembled, to certain conditions and provisions in the act of Congress of the sixth of March, one thousand eight hundred and twenty, entitled "An act to authorize the people of Missouri territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and to prohibit slavery in certain territories."

Whereas the act of Congress of the United States of America, approved March the sixth, one thousand eight hundred and twenty, entitled "An act to authorize the people of Missouri territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and to prohibit slavery in certain territories," contains certain requisitions and provisions, and, among other things, has offered to this convention, when formed, for and in behalf of the people inhabitating this state, for their free acceptance or rejection, the five following propositions, and which, if accepted by this convention, in behalf of the people as aforesaid, are to be obligatory on the United States, viz: "First; That section numbered sixteen in every township, and "when such section has been sold or otherwise disposed of, "other lands equivalent thereto, and as contiguous as may be, "shall be granted to the state for the use of the inhabitants of "such township for the use of schools. Second; That all salt "springs, not exceeding twelve in number, with six sections of "land adjoining to each, shall be granted to the said state for "the use of said state, the same to be selected by the legislature "of said state, on or before the first day of January, in the year "one thousand eight hundred and twenty-five, and the same, "when so selected, to be used under such terms, conditions and "regulations, as the legislature of said state shall direct; pro- "vided, that no salt spring, the right whereof, now is, or here- "after shall be confirmed or adjudged to any individual or "individuals, shall, by this section, be granted to said state; "and provided, also, that the legislature shall never sell or "lease the same at any one time for a longer period than ten "years, without the consent of Congress. Third; That five "per cent. of the net proceeds of the sale of lands lying within "the said territory or state, and which shall be sold by Con- "gress, from and after the first day of January next, after de- "ducting all expenses incident to the same, shall be reserved "for making public roads and canals, of which three-fifths "shall be applied to those objects within the state, under the "direction of the legislature thereof, and the other two-fifths "a defraying, under the direction of Congress, the expenses

"to be incurred in making of a road or roads, canal or canals, "leading to the said state. Fourth; That four entire sections "of land be, and the same are hereby, granted to the said state, "for the purpose of fixing their seat of government thereon; "which said sections shall, under the direction of the legislature "of said state, be located, as near as may be, in one body, at "any time, in such townships and ranges as the legislature "aforesaid may select, on any of the public lands of the United "States; provided, that such location shall be made prior to "the public sale of the lands of the United States surrounding "such location. Fifth; That thirty-six sections, or one entire "township, which shall be designated by the President of the "United States, together with the other lands heretofore re- "served for that purpose, shall be reserved for the use of a "seminary of learning, and vested in the legislature of said "state, to be appropriated solely for the use of such seminary, "by the Legislature."

Now, this convention, for and in behalf of the people inhabiting this state, and by the authority of the said people, do accept the five before recited propositions offered by the act of Congress under which they are assembled; and, in pursuance of the conditions, requisitions, and other provisions, in the before recited act of Congress contained, this convention, for and in behalf of the people inhabiting this state, do ordain, agree, and declare, that every and each tract of land sold by the United States, from and after the first day of January next, shall remain exempt from any tax laid by order, or under the authority, of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years, from and after the respective days of sale thereof; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees, or their heirs, remain exempt as aforesaid from taxation for the term of three years, from and after the date of the patents respectively: Provided, nevertheless, that, if the Congress of the United States shall consent to repeal and revoke the following clause in the fifth proposition of the sixth section of the act of Congress before recited, and in these

words, viz: "That every and each tract of land, sold by the United States from and after the first day of January next, shall remain exempt from any tax laid by order, or under the authority, of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale, and further," that this convention, for and in behalf of the people of the state of Missouri, do hereby ordain, consent and agree, that the same be so revoked and repealed, without which consent of the Congress as aforesaid, the said clause to remain in full force and operation as first above provided for in this ordinance: and this convention doth hereby request the Congress of the United States so to modify their third proposition, that the whole amount of five per cent. on the sale of public lands therein offered may be applied to the construction of roads and canals, and the promotion of education, within this state, under the direction of the legislature thereof. And this convention, for and in behalf of the people inhabiting this state, and by the authority of the said people, do further ordain, agree, and declare, that this ordinance shall be irrevocable without the consent of the United States.

Done in convention, at St. Louis, in the state of Missouri, this nineteenth day of July, in the year of our Lord, one thousand eight hundred and twenty, and of the independence of the United States of America the forty-fifth.

By order of the Convention,

DAVID BARTON, President.

Attest,

William G. Pettus, Secretary.

STATE OF MISSOURI,

St. Louis, September 27, 1820.

I, David Barton, president of the convention of the late territory of Missouri, certify the foregoing to be true copies of the constitution of said state, and of "An ordinance declaring the assent of the people of the state of Missouri, by their repre-

sentatives in convention assembled, to certain conditions and provisions in the act of Congress of the sixth of March, one thousand eight hundred and twenty, entitled 'An act to authorize the people of Missouri territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and to prohibit slavery in certain territories."

DAVID BARTON.

APPENDIX IV.

MISSOURI'S SOLEMN PUBLIC ACT, JUNE 26, 1821.

A SOLEMN PUBLIC ACT, declaring the assent of this State to the fundamental condition contained in a resolution passed by the Congress of the United States, providing for the admission of the State of Missouri into the Union on a certain condition.

Whereas, the Senate and House of Representatives of the United States, by their resolution approved on the second day of March, in the year of our Lord eighteen hundred and twenty-one, did declare that Missouri shall be admitted into this Union, upon an equal footing with the original States in all respects whatever, upon the fundamental condition, that the fourth clause of the twenty-sixth section of the third article of the constitution, submitted on the part of said State to Congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the States in this Union, shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States; *provided*, that the legislature of the said State, by a solemn public act, shall declare the assent of said state, to the said fundamental condition, and shall transmit to the President of the U. States, on or before the fourth Monday in November next, an authentic copy of the said act; upon the receipt whereof, the President, by proclamation shall announce the fact, whereupon, and without any further proceeding on the part of Congress, the admission of said state into this Union shall be considered as complete.

Now, for as much as the good people of this state have by the most solemn and public act in their power, virtually assented to the said fundamental condition, when by their representatives in full and free convention assembled, they adopted the constitution of this state, and consented to be incorporated

into the Federal Union, and governed by the constitution of the United States, which among other things provides that the said constitution, and the laws of the United States made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or law of any state to the contrary notwithstanding; and although this general assembly are of opinion that the congress of the United States have no constitutional power to annex any condition to the admission of this state into the federal Union, and that this general assembly have no power to change the operation of the constitution of this state, except in the mode prescribed by the constitution itself; *Nevertheless*, as the congress of the United States have desired this general assembly to declare the assent of this state to said fundamental condition, and forasmuch as such declaration will neither restrain, or enlarge, limit or extend the operation of the constitution of the United States, or of this state, but the said constitutions will remain in all respects as if the said resolution had never passed, and the desired declaration was never made, and because such declaration will not divest any power or change the duties of any of the constituted authorities of this state, or of the United States, nor impair the rights of the people of this state, or impose any additional obligation upon them, but may promote an earlier enjoyment of their vested federal rights, and this state being moreover determined to give to her sister states, and to the world, the most unequivocal proof of her desire to promote the peace and harmony of the Union, Therefore,

Be it enacted and declared by the General Assembly of the State of Missouri, and it is hereby solemnly and publicly enacted and declared,

That this state has assented and does assent that the fourth clause of the twenty-sixth section of the third article of the constitution of this state, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the United States shall be excluded from the enjoyment of any of the

privileges and immunities to which such citizens are entitled under the constitution of the United States.

Approved, June 26, 1821.

Terr. Laws. v. I. p. 758-759.

Mo. Sess. Act, spec. 1821, pp. 9-11.

INDEX.

NOTE:—Abbreviations: const.—Mo. constitution of 1820; const. conv.—Mo. constitutional convention of 1820; (Del.)—Delegate to Mo. const. conv.; f—page following; n—note; pop.—population; rep.—representative; sen.—senator or senate.

General terms, *e. g.*, government, refer to Missouri or Upper Louisiana except where otherwise indicated.

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Administrative acts const. conv. 168ff.

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Allen, Bethel, rep. 268.

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